

Exhibit 1

EXHIBIT 5 TO VCP – QUALIFIED PLAN

July 12, 2005

WRITER'S DIRECT NUMBER: (317) 236-2413

DIRECT FAX: (317) 592-4616

INTERNET: BRAITMAN@ICEMILLER.COM

WRITER'S DIRECT NUMBER: (317) 236-2110

DIRECT FAX: (317) 592-4713

INTERNET: TERRY.MUMFORD@ICEMILLER.COM

WRITER'S DIRECT NUMBER: (317) 236-2468

DIRECT FAX: (317) 592-4702

INTERNET: KATRINA.CLINGERMAN@ICEMILLER.COM

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Internal Revenue Service
Attention: T:EP:RA:VC
P.O. Box 27063
McPherson Station
Washington, DC 20038

**RE: Application for Determination for Employee Benefit Plan with Respect to the
San Diego City Employees' Retirement System
EIN: 20-1800126**

Dear Sir or Madam:

ENCLOSURES

Enclosed are the following documents relating to the request by the San Diego City Employees' Retirement System ("System") for a determination on the qualified status of the System, including a request under Rev. Proc. 2005-6, Section 16.02, for an IRS ruling with regard to Code Section 401(h), in conjunction with all other Code Section 401(a) matters:

1. Form 8717, User Fee for Employee Plan Determination Letter Request, and a check in the amount of \$700.00 in payment of the required user fee;
2. Form 5300, Application for Determination for Employee Benefit Plan, for the System, together with the required attachments;
3. Form 2848, Power of Attorney, regarding the System (see Exhibit 6 to the VCP filing);
4. A copy of the following plan documents that relate to SDCERS:
 - (a) California Constitution Article XVI, Section 17 (attached as Exhibit A);

- (b) City Charter Article IX, Sections 141 – 149 (attached as Exhibit B);
 - (c) Municipal Code §§ 24.0100 – 24.1809, which are added, amended and repealed by Ordinances adopted by the City Council (attached as Exhibit C);
 - (d) Earnings Code Document (attached as Exhibit D);
 - (e) City Council Resolution 297212, adopted 10/21/02 (attached as Exhibit E);
 - (f) Article 15 of the Memorandum of Understanding between the City and the San Diego Municipal Employees' Association effective July 1, 2002 through June 30, 2005 (attached as Exhibit F);
 - (g) Article 47 of the Memorandum of Understanding between the City and International Association of Firefighters, Local 145 effective July 1, 2002 through June 30, 2005 (attached as Exhibit G);
 - (h) Article 65 of the Memorandum of Understanding between the City and the San Diego Police Officers' Association effective July 1, 2003 through June 30, 2005 (attached as Exhibit H);
 - (i) (applicable solely to Airport employees) Airport Agreement to Administer (attached as Exhibit I);
 - (j) (applicable solely to Airport employees) Airport Retirement Plan (attached as Exhibit J);
 - (k) (applicable solely to Port employees) Port Agreement to Administer (attached as Exhibit K); and
 - (l) (applicable solely to Port employees) Port Retirement Plan (attached as Exhibit L).
5. A copy of the Board minutes for May 20, 2005 (attached as Exhibit M) and a copy of Resolution 05-01 (attached as Exhibit N);
6. A copy of the current rates applicable to City General Members (attached as Exhibit O), City Safety Members (attached as Exhibit P), Port General Members (attached as Exhibit Q), Port Safety Members (attached as Exhibit R), and Airport Members (attached as Exhibit S); and

7. A copy of the completed Part I of the checklist in the Rev. Proc 2005-6 Appendix intended to satisfy the requirement for providing the location of the plan provisions that satisfy the Code Section 401(h) requirements.

This letter and the enclosed materials constitute a request for determination on the qualified status of the System in its entirety under Section 401(a) of the Internal Revenue Code of 1986, as amended, pursuant to Revenue Procedure 2005-6. We would envision that the amendment dates for the determination letter would be stated as follows: "This determination letter is applicable for SDCERS as in effect on May 20, 2005. This determination letter is also subject to your adoption of the proposed amendments submitted in your letter dated July 12, 2005."

The System has been amended to comply with the Economic Growth Tax Relief and Reconciliation Act of 2001 ("EGTRRA"), effective on and after the first day of the plan year beginning after December 31, 2001, based on model amendments provided under Internal Revenue Service Notice 2001-57. The amendments to the System are intended as good faith compliance with the requirements of EGTRRA. In the event the Internal Revenue Service expands the determination letter program to review of the requirements under EGTRRA while this request is pending, we request that the determination letter be issued taking into account the requirements of EGTRRA.

401(h) RULING PROCEDURES

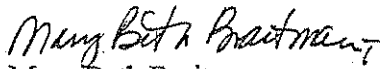
Consideration is requested with regard to Code Section 401(h), in addition to other matters under Code Section 401(a). Pursuant to Rev. Proc 2005-6, Section 16.02, we have included a completed Part I of the checklist in the Rev. Proc 2005-6 Appendix intended to satisfy the requirement for providing the location of the plan provisions that satisfy the Code Section 401(h) requirements. See enclosed CHECKLIST - 401(h) Account.

CLOSING

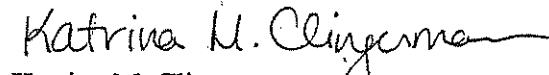
If an adverse determination is contemplated, a conference is hereby requested. If you have any questions regarding this application, please call one of us pursuant to the enclosed Power of Attorney. Please issue a copy of the determination letter to one of us at the above address.

Very truly yours,

ICE MILLER


Mary Beth Braitman


Terry A. M. Mumford


Katrina M. Clingerman

MBB/TAMM/KMC/GW
Enclosures

cc: Lawrence B. Grissom (with bound copy)
Loraine E. Chapin (with bound copy)
Roxanne Story Parks (with bound copy)

Exhibit 2

INTERNAL REVENUE SERVICE
VOLUNTARY CORRECTION PROGRAM
COMPLIANCE STATEMENT

Date: _____
(to be completed by IRS)

Re: San Diego City Employees' Retirement System
SE:T:EP:RA Control Number: 911659038
Employer Identification Number: 20-1800126
Plan No.: 001

I. APPLICANT'S DESCRIPTION OF QUALIFICATION FAILURE(S)

The City of San Diego ("Plan Sponsor") is the principal sponsor of the San Diego City Employees' Retirement System ("Plan"). In accordance with state and local laws, the Board of Administration For The San Diego City Employees' Retirement System ("the Applicant") is responsible for the daily administration in regard to the Plan, and has submitted a request to the Internal Revenue Service ("the Service") under the Voluntary Correction Program for a compliance statement relating to various qualification failures under section 401(a) of the Internal Revenue Code ("Code") that they have identified. The Plan uses the twelve-month period that ends on June 30 as its plan year. The Plan is a multiple employer defined benefit pension plan that has also been adopted by the San Diego Unified Port District and the San Diego County Regional Airport Authority. The Plan is also considered a governmental plan under Code section 414(d).

Failure #1

The Plan was not amended to comply with all of the applicable requirements of the Tax Reform Act of 1986 ("TRA '86"), the Unemployment Compensation Amendments of 1992 ("UCA"), and the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") by the required dates in accordance with section 401(b) of Code and regulations thereunder.

Failure #2

The Plan was not amended to comply with all of the applicable requirements of the Uruguay Round Agreements Act; the Uniformed Services Employment and Reemployment Rights Act of 1994; the Small Business Job Protection Act of 1996; the Taxpayer Relief Act of 1997; the Internal Revenue Service Restructuring and Reform Act of 1998; and the Community Renewal Tax Relief Act of 2000 (collectively known as "GUST") by the required dates in accordance with section 401(b) of the Code and regulations thereunder.

San Diego City Employees' Retirement System

Failure #3

The Plan was not amended to incorporate the interim amendments required for compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") by the required date(s) in accordance with section 401(b) of the Code and regulations thereunder.

Failure #4

During the plan years that ended in 1989 through 2008, the terms of the Plan provided special retirement benefits to past and current union presidents of the San Diego Municipal Employees' Association, Police Officers' Association, and Local 145, the International Association of Fire Fighters AFL-CIO ("Unions") that were not permitted by the Code. Under Code section 401(a), retirement benefits in a qualified plan can only be provided to employees of an employer and such benefits are generally based solely on service with and compensation paid by such employer. Specifically, the following problems were noted:

- (a) The Presidential Leave Program allowed former city employees who were no longer paid employees of the Plan Sponsor to continue to participate in the Plan as active participants and have their service as union presidents counted as credited service in determining retirement benefits under the Plan.
- (b) From 1989 through February 2004, the Plan accepted employee and employer contributions (based upon compensation paid by the Unions) that were paid by the Unions even though they had not adopted the Plan as participating employers.
- (c) Starting in 2002, the Incumbent President Program allowed compensation that was paid to the union presidents by the Unions to be counted in the determination of retirement benefits under the Plan, and such amounts would be combined with any other compensation paid by the Plan Sponsor subject to a specified dollar cap.

Failure #5

Starting in the plan year that ended in 2003 the terms of the Plan were amended to provide for an impermissible cash or deferred arrangement in violation of the Code section 401(a) in regard to the Cashless Leave Conversion Program that was offered to participants who were members of San Diego Firefighters Local 145 bargaining unit.

Failure #6

During the plan years that ended in 1983 through 1991 retiree health benefits were paid by the Plan even though the terms of the Plan did not provide for such benefits. Also, the Applicant represents that the Plan is owed additional funds from the Plan Sponsor relating to unreimbursed administrative expenses associated with the administration of the retiree health benefit account from 1993 through 2006. Both actions were in

San Diego City Employees' Retirement System

violation of Code section 401(a)(2). The Applicant represents that the accumulated amount of improper payments (plus interest) associated with this failure is \$33,830,251.

Failure #7

During the plan years that ended in 1998 through 2005 the terms of the Plan and its operation did not comply with all of the requirements of Code sections 401(a)(2) and 401(h) as they relate to retiree health benefits because the terms of the Plan provided that earnings of the trust would ultimately be used to fund these benefits resulting in the underfunding of the Plan. While retiree health benefits were paid from the Plan's retiree health account as required by the Code, the flow of funds was structured in a manner which made it extremely difficult, if not impossible to resolve that there was no inappropriate use of the Plan's assets.

Failure #8

During the plan years that ended in 1989 through 2004 the Applicant did not comply with the provisions of Code section 401(a)(9) with respect to required minimum distributions in regard to Plan participants who were owed a lump sum or a partial lump sum distribution. With respect to this failure, the Applicant requests a waiver of the excise tax under Code section 4974.

Failure #9

During the plan years that ended in 2000 through 2005 the Applicant allowed the retirement benefits for three participants to be determined using participant compensation that exceeded the limits imposed by the provisions of Code section 401(a)(17).

Failure #10

During the plan years that ended in 2002 through 2006 the Applicant did not comply with the provisions of Code section 401(a)(31) in regard to those participants who received eligible rollover distributions from the Plan.

Failure #11

During the plan years that ended in 2001 through 2006 the Applicant did not follow the terms of the Plan when the Applicant increased disability retirement benefits in regard to disabled plan participants by increasing their final compensation amount by 10% and using this revised figure to determine disability benefits. The Applicant represents that overpayments were made to 146 participants and that the accumulated amount of overpayments plus interest associated with this failure is \$1,221,543.

San Diego City Employees' Retirement System

Failure #12

During the plan years that ended in 1996 through 2007 the Applicant did not comply with the provisions of the Code when it allowed the Plan to pay out benefits that exceeded the limits imposed by Code section 415(b). The Applicant represents that overpayments were made to approximately 58 participants and that the accumulated amount of overpayments plus interest associated with this failure is approximately \$4,209,221.

Failure #13

From January 1, 2005, through the present, the Applicant has allowed the Plan to provide spousal death benefits to registered domestic partners even though such benefits are not provided for under the terms of the Plan.

Failure #14

Starting on July 26, 2004, the Plan Sponsor has made contributions to the Plan that exceeded what was called for under the terms of the Plan section 24.0801 as set forth in the Memoranda of Understanding (November 18, 2002) between the Plan Sponsor and the Applicant. These payments resulted from the settlement of a class action court lawsuit (Gleason v. City of San Diego) involving the Plan Sponsor and the Applicant regarding the level of contributions that needed to be paid to the Plan.

II. APPLICANT'S CORRECTION

Failures #1 & 2

The Plan Sponsor and each participating employer will correct the qualification failure by adopting amendments in the form of a city ordinance that will allow the terms of the Plan to fully comply with all of the requirements of TRA '86, UCA, OBRA '93 and GUST retroactively to the effective dates of the specific provisions contained in the amendments. To assist in this matter, the proposed amendment will include draft Board rules that will be adopted by the Applicant.

Failure #3

The Plan Sponsor and each participating employer will correct the qualification failure by adopting interim amendments that satisfy the requirements of EGTRRA retroactively to the applicable effective dates of the specific provisions contained in the amendments.

Failure #4

The Plan Sponsor will amend the Plan retroactively to remove any provisions relating to Presidential Leave, including the Incumbent President Program. The resulting changes to the Plan will indicate that benefits and participation under the Plan are limited to employees of the Plan Sponsor and any other participating employers that have adopted the Plan and that retirement benefits would be based solely on paid compensation and service associated with the Plan Sponsor or other participating employers.

In regard to any employee contributions that were either paid to the Plan directly by the Unions or derived from compensation paid by the Unions such funds will be returned to the affected plan participants along with accumulated interest. The distribution of these monies will be a taxable distribution to each affected participant and such distribution will not be subject any favorable tax treatment under the Code. The Applicant will send a letter to each participant informing the participant that the corrective distribution is taxable, not eligible for favorable tax treatment and cannot be rolled over as normally allowed under Code section 402(c). The Applicant also agrees that the distribution will be reported on Form 1099-R for the calendar year in which the distribution is made to the affected participants. The Applicant will return to the Unions the employer contributions that were paid to the Plan to by the Unions.

For all impacted participants, the Applicant will recalculate their benefits under the Plan and the Plan's records will be updated to reflect reduced benefits and service credits. Retirement benefits under the Plan, including the Deferred Retirement Option Plan ("DROP"), will be determined without using any compensation paid by the Unions and any union service will also be disregarded in any computations unless such service has already been purchased by the participants under the Plan's regular service purchasing provisions. For those impacted participants who are in retirement status, the monthly annuity that is currently being paid by the Plan will be reduced to the recalculated amount. The Applicant will recover any overpayments that have been paid to affected participants via an offset against the return of employee contributions mentioned in the preceding paragraph, by direct repayment to the Plan by the affected participants or by a special actuarial reduction to the corrected monthly pension benefit on a going forward basis.

Failure #5

The Plan Sponsor will amend the Plan retroactively to remove any provisions relating to the Cashless Leave Conversion Program. This change will remove the impermissible cash or deferred arrangement from the Plan.

San Diego City Employees' Retirement System

For all plan participants who took part in the Cashless Leave Conversion Program, the Applicant will recalculate their benefits under the Plan and the Plan's records will be updated to reflect reduced benefits and service credits. Retirement benefits under the Plan, including DROP, will be determined without regard to cashless leave amounts. For those impacted participants who are in retirement status, the monthly annuity that is currently being paid by the Plan will be reduced to the recalculated amount. The Applicant will recover any overpayments that have been paid to retired plan participants by reducing the revised monthly pension benefit further on a going forward basis via a special actuarial reduction that allows the overpayment to be recouped over the participant's remaining payment period.

Failure #6

The Applicant and Plan Sponsor have represented to the Service that the Plan Sponsor has fully corrected this failure by having made supplemental contributions to the Plan during the plan years ending in 2006, 2007 and the current plan year that exceeded the amounts specified by the Plan's actuary in regard to the mandatory actuarial required contributions ("ARC").

Failure #7

The Applicant and Plan Sponsor agree that in order to comply with all of the requirements of Code sections 401(a) and 401(h) the payment of retiree health benefits must be funded by separately designated employer contributions and cannot be funded (directly or indirectly) from pension assets, including plan earnings. Effective as of July 1, 2005, retiree health benefits were no longer paid out of the Plan's 401(h) account. Instead, such benefits were paid directly by the Plan Sponsor without the involvement of the Plan. To codify this action, the Plan Sponsor will amend the Plan to retroactively to remove these provisions effective as of July 1, 2005.

Failure #8

The Applicant represents that no annuity payments were paid in violation of the required minimum distribution requirements. The Applicant represents that the lump sum or partial lump sum payments have been made to all affected participants who were past their required minimum distribution date. The distribution amounts included additional amounts for interest relating to the delayed payment.

Failure #9

In terms of one affected participant who terminated without a vested pension, the Applicant represents that the failure only resulted in the computation of excess employee contributions and that no additional action needs to be taken since the excess amounts of \$420.89 were paid out as a lump sum in 2002 that was not rolled over.

In terms of the other two affected participants, the Applicant will recalculate their benefits under the Plan and the Plan's records will be updated to reflect reduced

San Diego City Employees' Retirement System

benefits. Retirement benefits under the Plan, including DROP, will not be determined using participant compensation that exceeds the limits imposed by Code section 401(a)(17). The Applicant will distribute the employee contributions associated with the excess compensation plus interest to the affected participants. The Applicant will send a letter to each participant informing them that the corrective distribution is taxable, not eligible for favorable tax treatment and cannot be rolled over as normally allowed under Code section 402(c). The Applicant also agrees that the distribution will be reported on forms 1099-R for the calendar year in which the distribution is made to the affected participants.

Failure #10

The Applicant has proposed to take no action in regard to the past distributions that were made during the period of failure. As noted previously for Failure #1, the Plan Sponsor will amend the Plan to contain language that allows it to meet the statutory requirements of Code section 401(a)(31). The Applicant has changed its administrative procedures in order to ensure that all future eligible lump sum distributions paid out by the Plan will comply with the requirements of Code section 401(a)(31).

Failure #11

The Applicant has stopped paying out excess disability benefits that are not authorized by the terms of the Plan and the 10% compensation adjustment is no longer applied in computing these benefits. In regard to the overpayments that were paid out during the period of failure, the Applicant and Plan Sponsor have represented to the Service that the Plan Sponsor has fully reimbursed the Plan by having made supplemental contributions to the Plan during the plan years ending in 2006, 2007 and the current plan year that exceeded the amounts specified by the Plan's actuary in regard to the mandatory ARC contributions.

Failure #12

The testing methodology that was used by the Applicant to determine an individual's limit under Code section 415(b) during the period of failure is set forth within the document entitled "San Diego City Employees Retirement System 415(b), (c) and (n) Compliance Strategy Report" with a revision date of December 5, 2007 prepared by the Applicant's representative, Ice Miller as supplemented by Exhibits A and B with the same revision date prepared by the actuary, Cheiron. These documents are considered attached to and made a part of this compliance statement.

The Applicant has agreed that payments from the Plan during this current limitation year will not exceed the limits of Code section 415(b). If necessary, the payments being made to current retirees and/or beneficiaries will be reduced by the Applicant in order to ensure that the benefits paid out by the Plan do not exceed the applicable limits of Code section 415(b).

San Diego City Employees' Retirement System

The Applicant and Plan Sponsor have represented to the Service that repayments of the overpayments should not come from the affected participants since the Plan Sponsor is obligated to pay these excess benefits due to the existence of a Code section 415(m) plan and the laws of State of California. The Applicant and Plan Sponsor have also represented to the Service that the Plan Sponsor has fully reimbursed the Plan in regard to the overpayments plus interest by having made supplemental contributions to the Plan during the plan years ending in 2006, 2007 and the current plan year that exceeded the amounts specified by the Plan's actuary in regard to the mandatory actuarial required contributions ("ARC").

Failure #13

The Plan Sponsor will retroactively amend the terms of the Plan to conform to the Plan's operation in regard to this matter.

Failure #14

The Plan Sponsor will retroactively amend the Plan to indicate that the amount of employer contributions that must be paid to the Plan by the Plan Sponsor will no longer be based upon any Memoranda of Understanding between the Plan Sponsor and the Applicant. The amendment will be effective as of July 26, 2004 and it will allow the terms of the Plan to conform to the Plan's operation in regard to this matter.

III. APPLICANT'S REVISION OF ADMINISTRATIVE PROCEDURES

Failures #1, 2 & 3

The Applicant is working with outside tax counsel who will advise them in regard to changes in the Code that require amendments to be made to the Plan. The Applicant and Plan Sponsor will work together to ensure that the Plan document is updated in a timely manner for tax law changes. The Applicant has indicated that it will apply for a Cycle C determination letter in accordance with the applicable timeframes currently set forth in Revenue Procedure 2007-44.

Failure #4

The Applicant no longer permits the Unions to make any contributions to the Plan. Only contributions from the Plan Sponsor and participating employers will be accepted. The Applicant has hired outside tax counsel who will assist in ensuring that future changes to the Plan are in compliance with Code section 401(a) requirements.

Failure #5

The Plan Sponsor will not adopt any future amendments to the Plan that result in a cash or deferred arrangement. The Applicant has hired outside tax counsel who will assist in ensuring that future changes to the Plan are in compliance with Code section 401(a) requirements.

San Diego City Employees' Retirement System

Failure #6

The Applicant has changed its procedures and it and the Plan Sponsor now realize that retiree health benefits cannot normally be paid by the Plan and that the expense of administering retiree health benefits cannot come from the Plan's assets.

Failure #7

The Applicant has hired outside tax counsel who will assist in ensuring that future changes to the Plan are in compliance with Code section 401(a) and other applicable requirements under the Code.

Failure #8

The Applicant has implemented a new annual monitoring system that will ensure that all required minimum distributions begin on a timely basis and include benefits under the Plan with respect to all types of Plan participants and beneficiaries.

Failure #9

The Applicant has revised its software, testing protocols and internal reports to monitor participant compensation and cut it off when it reaches the appropriate limits under Code section 401(a)(17). Employee contributions will be cutoff and no retirement benefits will be based on the excess compensation.

Failure #10

The Applicant has educated its workforce in regard to the various benefits of the Plan that are subject to Code section 401(a)(31) by creating a detailed chart. Formal, detailed procedures that reflect how the Plan will comply with Code section 401(a)(31) have been written and the Applicant will use these documents when administering the Plan in regards to this matter.

Failures #11, 13 & 14

The Applicant agrees not to administer the Plan and/or provide benefits in a manner that is not explicitly authorized by the Plan. If the Applicant believes that the Plan's operation needs to be changed it will work with its tax counsel and the Plan Sponsor to have the Plan amended before changing the Plan's operation.

Failures #12

The Applicant has revised its administrative procedures for ensuring the Plan's compliance with the limits of Code section 415(b) as detailed within the previously referenced document entitled "San Diego City Employees Retirement System 415(b), (c) and (n) Compliance Strategy Report" with a revision date of December 5, 2007 prepared by the Applicant's representative, Ice Miller as supplemented by Exhibits A and B with the same revision date prepared by the actuary, Cheiron.

IV. APPLICANT'S PAYMENT

The Plan Sponsor and Applicant will neither attempt to nor otherwise amortize, deduct, or recover from the Service any compliance fee paid in connection with this compliance statement, nor receive any Federal tax benefit on account of payment of such compliance fee.

V. ENFORCEMENT RESOLUTION

The Service will not pursue the sanction of plan disqualification on account of the qualification failure(s) described in Part I. The Service will waive the excise taxes under Code section 4974 on account of the qualification failure(s) described in Failure 8.

The Service will treat the amendment(s) described in Failure number 3 as if they had been timely adopted for the purpose of making available the extended remedial amendment period currently set forth in Revenue Procedure 2007-44, 2007-28 I.R.B. 54. However, this compliance statement does not constitute a determination as to whether any such plan amendment(s), as drafted, complies with the applicable change in qualification requirements.

San Diego City Employees' Retirement System

This compliance statement considers only the acceptability of the correction method(s) and the revision(s) to administrative procedures described in the submission and does not express an opinion as to the accuracy or acceptability of any calculations or other material submitted with the application. In no event may this compliance statement be relied on for the purpose of concluding that the Plan or Plan Sponsor (as defined in the applicable revenue procedure setting forth the Employee Plans Compliance Resolution System) was not a party to an abusive tax avoidance transaction. The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

This compliance statement is conditioned on (1) there being no misstatement or omission of material facts in connection with the submission, and (2) the completion of all corrections described in Parts II and III within one hundred fifty (150) days of the date of the compliance statement.

By signing this compliance statement, the Plan Sponsor and Applicant hereby agree to its terms.

The City of San Diego

By: [Signature]

Title: COO

Date: 12/20/07

Board of Administration For The San Diego City Employees' Retirement System

By: Thomas C Hebrant

Title: President, Board of Administration

Date: 12/20/07

Approved: _____
Joyce Kahn, Manager
Employee Plans Voluntary Compliance
Tax Exempt and Government Entities Division

<u>Contact information:</u> Paul C. Hogan SE:T:EP:RA:VC: Group 7554 915 2nd Ave.- Mail Stop 510 Seattle, WA 98174 206-220-6085

Exhibit 3

000595

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO						1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) <div style="text-align: right;">331</div>	
TO: City Attorney		2. FROM (ORIGINATING DEPARTMENT): Council President Scott Peters				3. DATE: 1/22/2008	
4. SUBJECT: Retention of Outside Counsel Services – Presidential Leave							
5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.) Betsy Kinsley 236-6687				6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:		
DEPT.							
ORGANIZATION							
OBJECT ACCOUNT							
JOB ORDER							
C.I.P. NUMBER							
AMOUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	Council District one	E. Dajobito Kinsley	1/24/08	8	DCDD/COO		
2							
3							
4							
5							
6							
7							
				DOCKET COORD: _____ COUNCIL LIAISON: _____ <input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <i>ms</i> <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 2/5/08			
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTION(S) <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
1. Authorize the Mayor to negotiate an amendment to the current agreement with Foley and Lardner, outside legal counsel, for the sole purpose of reviewing and advising the Mayor and City Council on legal issues associated with the elimination of the Presidential Leave Program pension benefits in response to the IRS Voluntary Correction Program Compliance Statement.							
11A. STAFF RECOMMENDATIONS:							
12. SPECIAL CONDITIONS:							
COUNCIL DISTRICT(S):							
COMMUNITY AREA(S):							
ENVIRONMENTAL IMPACT:							
HOUSING IMPACT:							
OTHER ISSUES:							

000597

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: January 23, 2008 REPORT NO:
ATTENTION: Members of the City Council
ORIGINATING DEPARTMENT: Office of the Council President
SUBJECT: Retention of Outside Legal Services – Presidential Leave
Program
COUNCIL DISTRICT(S): All
CONTACT/PHONE NUMBER:
REFERENCE: IRS Voluntary Correction Program Compliance Statement

REQUESTED ACTION:

City Council authorization for the Mayor to negotiate and execute an amendment to the retention agreement with the law firm Foley and Lardner for the sole purpose of reviewing and advising the City on legal issues associated with the elimination of Presidential Leave Program pension benefits in response to the IRS Voluntary Correction Program Compliance Statement.

EXECUTIVE SUMMARY:

The Internal Revenue Service has recently issued a Compliance Statement in response to the Voluntary Correction Program filings initiated by San Diego City Employee Retirement System (SDCERS). The IRS Compliance Statement describes changes which must be made to the City's Retirement Plan in order for the Plan to come into compliance with IRS codes and to maintain its qualified status under federal law. The Compliance Statement includes a determination that the Presidential Leave Program violates IRS requirements. The Compliance Statement requires that Presidential Leave Plan elements be retroactively removed from the plan document and specifies other corrective actions including the return of contributions and the reduction of benefits and service credits for Presidential Leave Program participants. (See attachment for the full compliance statement finding and direction regarding the Presidential Leave benefit).

On January 8th the City Council authorized retention of the law firm Foley and Lardner to advise the Mayor and City Council on the terms and conditions of the IRS Compliance Statement and to review the draft ordinance which would incorporate the Municipal Code changes necessary to bring the SDCERS Plan document into compliance. Today's action would authorize an amendment to the scope of work with the firm to include reviewing and advising the Mayor and Council on legal issues associated with the elimination of the Presidential Leave Program benefit.

FISCAL CONSIDERATIONS:

The initial \$50,000 authorization for Foley and Lardner, which was approved on January 8, may be sufficient to cover the costs for these additional legal services. If not, a future funding authorization action will be necessary.

Council President Scott Peters

Exhibit 4

Retirement Office
City of San Diego
MEMORANDUM

533-4660

Date: February 17, 1989
To: Ed Ryan, Auditor and Comptroller
From: Lawrence Grissom, Retirement Administrator
Subject: PRESIDENTIAL LEAVE

60011 Fd
This is to confirm a variety of items on this subject which we covered in and after our meeting on February 16, 1989. Presidential Leave is an approved leave and, as such, buy back is covered by Municipal Code Section 24.0313.

*2/L
Dec 1 #10*
The cited code section provides that an employee may request to buy back service credit for approved leave. Such request must be made within sixty (60) days of return to service. The cost to buy back is broken down into two basic categories, as follows:

66
SAFETY

9133 9135
I. PERIODS OF ONE YEAR OR LESS. Employee must pay the amount of employee contribution, plus interest, only. The City pickup is a portion of the employee contribution paid on behalf of the employee and is, thus, a part of the employee contribution.

9165 9165
II. PERIODS IN EXCESS OF ONE YEAR. Employee must pay the employee contributions described above, and, in addition, must pay the employer contribution, plus interest.

Ron Newman, President of the POA, will be returning to active duty effective March 4, 1989. I have provided him with a buy back cost based on the above.

We agreed that employees on presidential leave would be allowed to pay their contributions on a pay-period-by-pay-period basis prospectively. The basis for the calculation of these contributions will be exactly as described above; i.e., employer contributions will not be charged for the first year, but will for any period over one year. In addition, since we will be receiving contributions each pay period, we will not charge interest. I have discussed this with Jack Katz, and he agrees that this procedure is legally correct.

What did we already do with Ron Newman & Barry Enright
MAR 8 1989

AUD-ERY-083-0114

Ed Ryan
February 17, 1989
Page Two

I have also informed POA of this. I understand that Harry Eastus will be replacing Ron Newman, effective March 4, 1989.

We also agreed that the above is applicable to other employee organization presidents. I will volunteer to handle communicating this to those individuals and organizations.

Please advise me as soon as possible of any special procedural steps necessary in the processing of the biweekly payments.

cc: Jan Beaton
Jack Katz
Bob Ferrier
Ron Newman

Exhibit 5

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
MEMORANDUM

FILE: W:\EXEC\BD\JUDIE
DATE: October 9, 1997
TO: Retirement Board, via Business Procedures Committee
FROM: Lawrence B. Grissom, Retirement Administrator *Lawrence B. Grissom*
SUBJECT: Request for Waiver of Interest on Purchase by Judie Italiano

BACKGROUND

Judie Italiano is the President/General Manager of the MEA (Municipal Employees Association). Prior to being appointed to that position in 1986, she was a City employee. She took a leave of absence from her City employment to assume the MEA position. She is requesting that you waive interest on the purchase of her LWOP (Leave Without Pay) in the amount of \$19,809.50.

Her position as it relates to membership in CERS is analogous to the President of the POA (Police Officer's Association). That position is also filled by a City employee who has taken a leave of absence to assume the position. Both the MEA and POA pay their Presidents a salary.

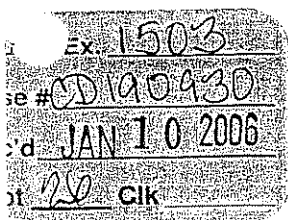
In 1989, the then President of POA was allowed to purchase service credit in CERS through the normal process for purchasing LWOP service. In addition, the POA was allowed to pay normal retirement contributions, both employee and employer, on behalf of its President on an ongoing basis. These contributions are based on the age at enrollment into CERS and the salary received as President. This procedure has been in place since 1989.

This procedure is only applicable to the Presidents of the MEA and POA. The heads of the other two employee organizations, Local 127, and Firefighters Local 145, each have different employment arrangements.

Apparently Ms. Italiano made a request for similar treatment at some time prior to 1989 and was denied by the City Manager. She contacted Staff on this issue in 1996 and the ensuing discussions resulted in purchase cost calculations and the request before you.

The purchase costs are outlined in the attached letter from Staff to Ms. Italiano dated August 28, 1997. The amount of interest she is requesting you to waive is for the purchase of LWOP only, in the amount of \$19,809.50.

The provision for enrollment of the President of an employee organization is in the Municipal Code at Section 24.0201 (3). The provision for the purchase of LWOP is at Section 24.1307.



RECOMMENDATION

The Board has very broad authority under the Municipal Code to establish procedures, including cost calculations, for purchase of service. SDMC 24.1301 -- Purpose and Intent -- states, "Subject to procedures established by the Board, ...". Further, SDMC 24.1310 -- Purchase of Service Credit Payment Options -- states, "To purchase service credit, a Member must elect to pay and thereafter pay, ... an amount, including interest, determined by the Board."

The sections cited above would appear to give the Board the authority to waive interest as requested, should you elect to do so.

Attachments :

LBG:siz

Exhibit 6

1
2 ANN MARIE SMITH,
3 THE DEFENDANTS' WITNESS, HAVING BEEN FIRST DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5
6 THE COURT: MS. SMITH, IF YOU WOULD COME UP AND HAVE
7 A SEAT.

8 MS. HAHN, YOU HAVE HAD THIS COLD FOR TWO MONTHS.
9 WHAT IS UP WITH YOU? YOU HAD BETTER GO TO THE DESERT OR
10 SOMETHING.

11 MS. HAHN: I SHOULD.

12 THE COURT: PUT THIS ON YOUR JACKET UP NEAR THE
13 COLLAR.

14 THANK YOU.

15 THE COURT CLERK: PLEASE STATE YOUR FULL NAME AND
16 SPELL YOUR LAST NAME FOR THE RECORD.

17 THE WITNESS: ANN MARIE SMITH, S-M-I-T-H.

18 THE COURT CLERK: THANK YOU.

19
20 DIRECT EXAMINATION

21 BY MR. ROSE:

22 Q. GOOD AFTERNOON, MS. SMITH.

23 WHAT IS YOUR OCCUPATION?

24 A. I AM AN ATTORNEY.

25 Q. HOW MANY YEARS IN PRACTICE HAVE YOU BEEN?
26 A. SINCE 1985.

27 Q. ARE YOU A MEMBER OF THE CALIFORNIA BAR?
28 A. I DO.

1 AFTER HER LEAVE BEGAN?

2 A. NOT INITIALLY.

3 Q. DO YOU RECALL A REQUEST THAT MEA'S PRESIDENT BE
4 PERMITTED, THAT IS MS. ITALIANO BE PERMITTED TO CONTINUE
5 PARTICIPATING IN SDCERS WHILE ON UNPAID LEAVE?

6 A. THAT REQUEST WAS MADE TO THE CITY WHEN HER LEAVE OF
7 ABSENCE, UNPAID APPROVED LEAVE OF ABSENCE, FIRST BEGAN AND THE
8 REQUEST WAS DENIED.

9 Q. YOU SAID THAT WAS 1987?

10 A. YES.

11 Q. AND WAS HER REQUEST APPROVED THEN?

12 THE COURT: IT WAS DENIED.

13 MR. ROSE: OH, SORRY.

14
15 BY MR. ROSE:

16 Q. AND SO HER REQUEST AT THAT TIME WAS DENIED?

17 A. THAT'S RIGHT.

18 Q. OKAY. SO HOW LONG DID MS. ITALIANO CONTINUE AS
19 PRESIDENT OF MEA ON UNPAID LEAVE BUT NOT PARTICIPATING IN
20 SDCERS?

21 A. UNTIL LATE 1997.

22 Q. WHAT HAPPENED AT THAT TIME?

23 A. AT SOME POINT PRIOR TO OCTOBER OF 1997, MY BEST
24 RECOLLECTION BEING THAT IT WAS SOMETIME DURING 1996,
25 MS. ITALIANO BECAME AWARE THAT ALTHOUGH HER REQUEST TO
26 CONTINUE TO PARTICIPATE IN THE PENSION PLAN ONCE ON AN
27 APPROVED LEAVE OF ABSENCE TO SERVE AS UNION PRESIDENT HAD BEEN
28 DENIED, THAT THE PRESIDENT OF THE POLICE OFFICERS ASSOCIATION

1 HAD BEEN ALLOWED BY THE CITY TO CONTINUE TO PARTICIPATE IN THE
2 PENSION PLAN, AND THAT RAISED THE RED FLAG THAT AN INEQUITY
3 HAD OCCURRED AND THAT WHAT HAD BEEN GRANTED TO POA'S PRESIDENT
4 HAD BEEN DENIED TO MEA'S PRESIDENT, AND THAT ISSUE WAS BROUGHT
5 TO THE CITY FOR REDRESS.

6 MR. ROSE: LET ME SEE IF I CAN MARK A COUPLE OF
7 EXHIBITS, YOUR HONOR, AND I'LL DO THEM ALL AT ONE TIME, THE
8 NEXT NUMBERS IN ORDER.

9 (AN OFF-THE-RECORD DISCUSSION IS HELD.)
10

11 BY MR. ROSE:

12 Q. I'M GOING TO HAND YOU SOME EXHIBITS THAT WE'RE GOING
13 TO BE LOOKING AT, MS. SMITH.

14 THE COURT: HERE IS A NEW PERSON. HER EARS WERE
15 BURNING.

16 (COURT'S EXHIBIT 1502, TWO-PAGE MEMORANDUM
17 DATED 2/17/89, IS MARKED FOR IDENTIFICATION.)
18

19 BY MR. ROSE:

20 Q. 1502 IS THE ONE I'M LOOKING AT FIRST.

21 THE COURT: WHICH ONE IS THAT?

22 MR. ROSE: THAT'S A TWO-PAGE MEMO DATED
23 FEBRUARY 17TH, 1989.

24 THE COURT: THAT'S 1502.

25 MR. HANNA: THANK YOU.
26

27 BY MR. ROSE:

28 Q. OKAY. DO YOU HAVE BEFORE YOU 1502, MS. SMITH?

1 A. I DO.

2 Q. DO YOU RECOGNIZE THAT MEMO?

3 A. YES, I DO.

4 Q. WHEN DID YOU FIRST SEE IT?

5 A. I BELIEVE THAT I FIRST SAW THIS MEMORANDUM IN -- IN
6 2004.

7 Q. THIS IS A SUBJECT OF PRESIDENTIAL LEAVE, DOES THIS
8 PERTAIN TO THE ISSUE WE HAVE JUST BEEN TALKING ABOUT?

9 A. YES, IT DOES.

10 Q. BUT AT THE TIME THAT IT APPARENTLY WAS GENERATED IN
11 FEBRUARY OF '89, YOU DID NOT HAVE IT?

12 A. I DID NOT.

13 Q. YOU DID NOT HAVE IT IN ROUGHLY 1996 WHEN
14 MS. ITALIANO MADE HER REQUEST?

15 A. I DID NOT.

16 Q. DID THE DISCOVERY OF THE PRESIDENTIAL LEAVE POLICY
17 FOR THE POLICE OFFICERS ASSOCIATION CAUSE THERE TO BE A CHANGE
18 IN MS. ITALIANO'S STATUS?

19 A. YES, IT DID.

20 Q. WHAT WAS THE CHANGE?

21 A. THE CHANGE WAS THAT THE CITY ACKNOWLEDGED THAT IT
22 HAD CREATED AN INEQUITY THROUGH INADVERTANCE AND THAT ITS
23 DENIAL TO MS. ITALIANO OF THE OPPORTUNITY TO CONTINUE TO
24 PARTICIPATE IN THE SDCERS PLAN WHILE ALLOWING POA'S PRESIDENT
25 TO DO IT HAD BEEN UNFAIR, AND THE CITY HAD AGREED TO REDRESS
26 THAT BY PERMITTING MS. ITALIANO TO BEGIN TO PARTICIPATE AGAIN
27 IN THE SDCERS PLAN AND TO MAKE CONTRIBUTIONS BASED ON HER
28 UNION-PAID SALARY, WHICH IS WHAT THE POA PRESIDENT WAS DOING,

1 BUT WITH THE UNDERSTANDING THAT HER CONTRIBUTIONS NEEDED TO
2 INCLUDE NOT ONLY WHAT SHE WOULD BE REQUIRED TO CONTRIBUTE AS
3 AN EMPLOYEE, THE FULL AMOUNT, BUT ALSO THAT SHE WOULD NEED TO
4 PAY WHAT THE CITY WOULD OTHERWISE BE REQUIRED TO PAY BASED ON
5 THAT UNION-PAID SALARY. SO SHE HAD TO ACCEPT RESPONSIBILITY
6 TO PAY BOTH SIDES OF THE CONTRIBUTION IN ORDER TO BECOME A
7 PARTICIPANT AT THAT POINT.

8 AND THE CITY REFERRED HER TO THE RETIREMENT SYSTEM
9 TO ADDRESS THE ISSUE OF HOW TO PAY FOR THE SERVICE THAT
10 BRIDGED THE GAP IN TIME BETWEEN WHEN SHE WAS DENIED THE RIGHT
11 TO PARTICIPATE AND THIS DATE IN OCTOBER OF 1997 WHEN IT WAS
12 BROUGHT BEFORE THE RETIREMENT BOARD.

13 Q. WAS THERE SOME LEGISLATION INVOLVED TO EFFECT THE
14 CHANGE?

15 A. THERE WAS -- TO THE BEST OF MY RECOLLECTION, THERE
16 WAS A PROVISION INCLUDED IN AN ORDINANCE EARLIER IN 1997 AT
17 THE TIME THAT THERE WAS AT LEAST TWO ORDINANCES ADOPTED THAT
18 RELATED TO THE NEW IMPROVEMENTS IN THE PENSION PLAN THAT CAME
19 OUT OF THE WHOLE MP-1 SET OF ISSUES, AND THAT THERE WAS AT
20 LEAST A LINE ITEM REFERENCE IN THAT ORDINANCE THAT ALLOWED THE
21 UNION PRESIDENT TO PARTICIPATE.

22 Q. IF YOU WOULD LOOK AT THE SECOND PAGE OF EXHIBIT 1502
23 AT THE SECOND PARAGRAPH, THIS MEMO SEEMS TO RELATE TO A
24 VARIETY OF ITEMS THAT OCCURRED AT A MEETING BETWEEN
25 MR. GRISSOM AND MR. RYAN. THE SECOND PARAGRAPH INDICATES, "WE
26 ALSO AGREED THAT THE ABOVE IS APPLICABLE TO OTHER EMPLOYEE
27 ORGANIZATION PRESIDENTS."

28 NOW, THIS IS A MEMO DATED 1989. DID YOU HAVE ANY

1 IDEA IN 1989 THAT THERE WAS A PROCEDURE APPLICABLE TO OTHER
2 EMPLOYEE ORGANIZATION PRESIDENTS OTHER THAN -- WITH REGARD TO
3 ANY?

4 A. NO.

5 Q. AND WHEN YOU FIRST BECAME AWARE OF THIS MEMO IN
6 2004, WAS IT CONSISTENT WITH WHAT YOU HAD COME TO LEARN IN THE
7 YEARS BEFORE?

8 A. YES, IT WAS. UM, IT WAS CONSISTENT WITH WHAT WAS
9 DISCOVERED PRIOR TO 1997 AND CONSISTENT WITH THE WAY IN WHICH
10 THE MATTER WAS REDRESSED IN 1997. I JUST HAD NEVER SEEN THIS
11 EARLIER MEMO. AND CONTRARY TO WHAT MR. GRISSOM'S STATED
12 INTENTION WAS, HE DID NOT GIVE NOTICE OF THIS TO MS. ITALIANO
13 BACK AT THAT TIME IN 1989, WHICH OF COURSE WOULD HAVE LED TO A
14 DIFFERENT RESULT IN 1989, AND WE WOULDN'T HAVE WAITED AS LONG
15 AS WE DID BEFORE DISCOVERING THE INEQUITY.

16 Q. SO WITH RESPECT TO THE NEXT SENTENCE OF THAT SAME
17 SECOND PARAGRAPH, WHEN MR. GRISSOM WROTE "I WILL VOLUNTEER TO
18 HANDLE COMMUNICATING THIS TO THOSE INDIVIDUALS AND
19 ORGANIZATIONS," YOU WERE NOT AWARE OF THAT EVER HAVING BEEN
20 DONE?

21 A. I WAS NOT.

22 Q. THERE ARE SOME CC'S ON THIS MEMO.

23 DO YOU RECOGNIZE THOSE INDIVIDUALS AND WHAT THEY DID
24 AT THE TIME?

25 A. I DO. JAN BEATON WAS IN A STAFF ADMINISTRATIVE
26 CAPACITY WITHIN THE RETIREMENT OFFICE.

27 JACK KATZ WAS A DEPUTY CITY ATTORNEY AT THIS POINT
28 IN TIME IN 1989, LATER BECAME A TRUSTEE ON THE RETIREMENT

Handled
AS
Frank
Ask
Grissom

1 BOARD REPRESENTING RETIRED EMPLOYEES.

2 BOB FARRIOR (PHONETIC) AT THIS TIME IN 1989 WAS THE
3 LABOR RELATIONS MANAGER FOR THE CITY.

4 AND RON NEWMAN WAS AN IMMEDIATE PAST PRESIDENT OF
5 THE POA, WHO IS ALSO REFERENCED WITHIN THE TEXT OF THIS MEMO.

6 Q. DO YOU HAVE ANY INFORMATION AT ALL AS TO WHETHER
7 ANYONE WAS KEEPING THIS INFORMATION A SECRET FOR THE YEARS
8 BETWEEN 1989 AND 1996?

9 A. I DON'T HAVE ANY REASON TO BELIEVE THAT ANYONE
10 INTENDED EITHER TO KEEP IT A SECRET OR INTENDED -- OR IN
11 PARTICULAR THAT MR. GRISSOM INTENDED NOT TO FOLLOW THROUGH
12 ON -- ON WHAT HE SAYS IN THE MEMORANDUM. BUT IN THE IMPERFECT
13 WORLD IN WHICH WE LIVE, IT DIDN'T -- IT SIMPLY DIDN'T HAPPEN
14 WHEN IT SHOULD HAVE.

15 (COURT'S EXHIBIT 1503, ONE-PAGE MEMORANDUM
16 FROM MR. GRISSOM DATED 10/09/97, IS MARKED
17 FOR IDENTIFICATION.)
18

19 BY MR. ROSE:

20 Q. NOW, LET ME ASK YOU TO TAKE A LOOK AT THE NEXT
21 EXHIBIT THAT'S MARKED, WHICH IS 1503, WHICH IS A ONE-PAGE
22 MEMORANDUM.

23 DO YOU SEE THAT, MS. SMITH?

24 A. I DO.

25 Q. DO YOU RECOGNIZE THIS MEMO?

26 A. YES, I DO.

27 Q. WHAT IS IT?

28 A. THIS IS THE MEMORANDUM FROM LARRY GRISSOM, AS

1 RETIREMENT ADMINISTRATOR, WHICH ACCOMPANIED MS. ITALIANO'S
2 REQUEST WHICH WAS PUT BEFORE THE RETIREMENT BOARD FIRST
3 THROUGH A BUSINESS AND PROCEDURES COMMITTEE AND THEN BEFORE
4 THE FULL BOARD FOR HANDLING IN 1997. AND AS I BELIEVE IS
5 THEIR PROTOCOL, MR. GRISSOM WROTE THIS ACCOMPANYING MEMORANDUM
6 TO GIVE THE BOARD THE BACKGROUND ON THE ISSUE AND THE REASON
7 FOR THE REQUEST THAT WAS GOING TO BE COMING BEFORE THEM.

8 Q. YOU HAVE READ THROUGH THIS, HAVE YOU NOT?

9 A. I HAVE.

10 Q. DOES IT ACCURATELY STATE THE STATE OF AFFAIRS AS OF
11 OCTOBER OF 1997?

12 A. YES, IT DOES.

13 Q. SO AT THE TIME OF THIS MEMORANDUM, HAD MS. ITALIANO
14 RESUMED HER PARTICIPATION IN SDCERS?

15 A. NOT AT THE TIME OF THE MEMORANDUM. THERE WERE TWO
16 ACTIONS THAT WERE GOING TO TAKE PLACE. ONE OF THEM WAS THE
17 GOING-FORWARD ACTION WHEREBY SHE WAS GOING TO MAKE
18 CONTRIBUTIONS TO THE RETIREMENT SYSTEM BASED ON HER UNION-PAID
19 SALARY, JUST AS THE POA PRESIDENT WAS DOING, ON THE CONDITIONS
20 AS I EARLIER STATED; THAT SHE PAY BOTH THE EMPLOYEE
21 CONTRIBUTION AND THE CITY'S CONTRIBUTION. BUT THE BOARD
22 NEEDED TO ACT ON THE ISSUE OF THE PAST SERVICE CREDIT AND WHAT
23 WAS OWED FOR THAT PERIOD OF TIME, AND THAT WAS EXCLUSIVELY
24 WITHIN THE PURVIEW OF THE RETIREMENT BOARD. IT WAS NOT THE
25 CITY'S JURISDICTION TO ADDRESS THAT.

26 SO SHE WAS REFERRED TO THE RETIREMENT BOARD, BROUGHT
27 HER ACTION TO THEM, IT WAS HANDLED IN OPEN SESSION, IT WAS
28 VOTED ON IN OPEN SESSION UNANIMOUSLY BY ALL PRESENT AT THAT

Get open session minutes transcript?

1 TIME, WHICH INCLUDED DIANN SHIPIONE.

2 Q. SO SINCE THAT TIME, THEN, HAS MS. ITALIANO, AS MEA
3 PRESIDENT, CONTRIBUTED TO SDCERS?

4 A. YES.

5 Q. SHE DRAWS HER SALARY FROM THE UNION, NOT FROM THE
6 CITY?

7 A. SHE DOES.

8 Q. DID SHE HAVE TO MAKE SOME CONCESSIONS TO THE CITY TO
9 GET THAT BENEFIT?

10 A. NO.

11 Q. DID YOU BELIEVE THAT THE CHANGE THAT WAS MADE IN
12 LATE 1997 THEN PUT HER AS THE MEA PRESIDENT IN THE SAME
13 POSITION AS THE POA PRESIDENT WITH RESPECT TO RETIREMENT
14 PARTICIPATION?

15 A. IT DID. IT PUT HER IN THE SAME POSITION AND GAVE
16 HER THE SAME TERMS AND CONDITIONS AS ALL GENERAL MEMBERS OF
17 THE RETIREMENT SYSTEM ENJOYED. IN OTHER WORDS, THIS WAS NOT A
18 SPECIAL RETIREMENT PLAN FOR HER, NOR WAS IT FOR THE POA
19 PRESIDENT. THE ONLY ISSUE WAS WHAT IS THE SALARY GOING TO BE
20 ON THE BASIS OF WHICH CONTRIBUTIONS WILL BE MADE.

21 THE COURT: SHE WAS PUT ON THE SAME EQUAL FOOTING AS
22 THE POA PRESIDENT AS FAR AS THAT IS CONCERNED.

23 THE WITNESS: THAT'S EXACTLY RIGHT.

24 THE COURT: THAT'S THE QUESTION.

25
26 BY MR. ROSE:

27 Q. AND THEN LOOKING AT THE THIRD PARAGRAPH OF
28 EXHIBIT 1503 AT THE LAST SENTENCE, IT STATES -- THIS IS FROM

1 MR. GRISSOM TO THE BOARD, "THIS PROCEDURE HAS BEEN IN PLACE
2 SINCE 1989."

3 DID YOU CONFIRM, ONCE YOU BECAME AWARE OF THIS
4 OCTOBER '97 MEMO, THAT, IN FACT, THAT HAD BEEN THE PROCEDURE
5 FOR POA SINCE 1989?

6 A. I DO NOT KNOW WHAT I DID, IF ANYTHING, TO CONFIRM
7 IT. I DO NOT THINK I HAD ANY REASON TO DOUBT THE ACCURACY OF
8 WHAT MR. GRISSOM WAS STATING AT THE TIME MS. ITALIANO'S
9 REQUEST WAS BEFORE THE BOARD. BUT WHETHER I DID ANYTHING
10 INDEPENDENT OF ACCEPTING HIS REPRESENTATION OR NOT, I DON'T
11 NOW RECALL.

12 Q. AFTER THE CHANGE WAS MADE IN OCTOBER OF '97, DID YOU
13 BELIEVE THAT THE POA AND THE MEA PRESIDENTS WERE ON EQUAL
14 FOOTING AS FAR AS RETIREMENT PARTICIPATION?

15 A. I DID.

16 Q. DID MS. ITALIANO'S UNION SALARY INCREASE IN THE
17 YEARS AFTER 1997?

18 A. THERE WERE PERIODIC INCREASES IN HER SALARY THAT
19 WERE EXCLUSIVELY WITHIN THE JURISDICTION OF THE BOARD OF
20 DIRECTORS, WHICH IS ELECTED FROM THE CITY WORKFORCE, 70-ODD
21 MEMBERS OF THE BOARD OF DIRECTORS. THEY SET HER SALARY AND
22 FROM TIME TO TIME THERE WERE INCREASES. AND WHEN THERE WAS AN
23 INCREASE, THE PROCEDURE WAS THAT HER OFFICE WOULD NOTIFY THE
24 RETIREMENT BOARD ADMINISTRATIVE STAFF OF THE CHANGE IN SALARY,
25 AND THAT STAFF WOULD CONFIRM THE NEW AMOUNT OF THE INCREASE IN
26 CONTRIBUTIONS THAT WOULD NEED TO BE SENT TO THE RETIREMENT
27 OFFICE.

28 THE COURT: DO ME A FAVOR, MOVE THAT BOOK FOR A

1 SECOND. NO, NO. MOVE IT.

2 WHAT DOES IT SAY?

3 THE WITNESS: "PLEASE ANSWER QUESTIONS YES OR NO."

4 THE COURT: THANK YOU. THE ANSWER IS "YES."

5 NEXT QUESTION.

6 EVERY LAWYER THAT COMES UP HERE DOES THE EXACT SAME
7 THING.

8 THE WITNESS: I'LL TRY.

9 THE COURT: GO AHEAD.

10 THE WITNESS: I'LL TRY NOT TO EXPLAIN.

11 THE COURT: THAT'S ALL RIGHT.

12
13 BY MR. ROSE:

14 Q. MS. SMITH, YOU HAVE BEEN IN ATTENDANCE THROUGHOUT
15 THIS PRELIMINARY HEARING; IS THAT CORRECT?

16 A. FOR ALMOST ALL OF IT, YES.

17 Q. WE HAVE HAD SOME TESTIMONY, YOU MAY HAVE HEARD IT,
18 ABOUT PICKUP PAYMENTS BY THE CITY. AS I RECALL, MR. RHODES
19 SAID HE BEGAN RECEIVING PICKUP PAYMENTS EFFECTIVE
20 JULY 1, 2002.

21 COULD YOU EXPLAIN FOR US WHAT THAT PHRASE MEANS,
22 "PICKUP PAYMENTS FROM THE CITY"?

23 A. EACH EMPLOYEE, AS A PARTICIPANT IN SDCERS, HAS A
24 CONTRIBUTION OBLIGATION. AND THAT AMOUNT IS DETERMINED BASED
25 ON THE AGE OF THAT EMPLOYEE AT THE TIME HE OR SHE BECAME A
26 PARTICIPANT IN THE SYSTEM. AND IT ALSO DEPENDS ON WHETHER
27 THAT EMPLOYEE IS A SAL- -- IS A SAFETY MEMBER OF THE SYSTEM OR
28 A GENERAL MEMBER OF THE SYSTEM, OR A LEGISLATIVE OR ELECTED

1 DO YOU RECOGNIZE THAT AS THE RESOLUTION THAT WAS
2 ADOPTED BY THE CITY COUNCIL?

3 A. I DO.

4 Q. YOU SAW IT AT ABOUT THE TIME, OCTOBER 21, 2002, IN
5 ITS FINAL FORM?

6 A. I PROBABLY SAW IT BEFORE THAT DATE IN ITS FINAL
7 FORM, BUT SOMETIME CLOSE IN TIME TO THAT DATE.

8 Q. AND CAN YOU RECALL ANYTHING AT ALL THAT CAME UP
9 ABOUT THE SUBJECT OF A CAP ON THE UNION PRESIDENT RETIREMENT
10 CALCULATION BETWEEN MR. KELLEY BRINGING IT UP THAT ONE DAY
11 BETWEEN YOU AND MS. ITALIANO AND OCTOBER 21, 2002?

12 A. TO THE BEST OF MY RECOLLECTION, THERE WAS NOT A
13 SINGLE OTHER REFERENCE TO IT DURING ALL OF THAT TIME UNTIL THE
14 DRAFT RESOLUTION CAME TO ME, AS I SAID, BEFORE OCTOBER.

15 Q. DID MS. ITALIANO RECEIVE ANY MONETARY BENEFIT BY
16 AGREEING TO MR. KELLEY'S PROPOSAL?

17 A. NO.

18 Q. NOW TAKING A LOOK AT EXHIBIT 1504, DID THIS OR I
19 SHOULD SAY DOES THIS ACCURATELY DEPICT THE AGREEMENT THAT YOU
20 AND MS. ITALIANO REACHED WITH THE CITY CONCERNING HER
21 RETIREMENT CALCULATION?

22 A. YES, IT DOES. UM -- THAT --

23 Q. IF YOU LOOK AT PAGE 3 AT THE BOTTOM, AFTER WE GET
24 PAST ALL OF THE WHEREASES, IT HAS WHAT IS BEING RESOLVED THAT
25 IS APPROVED BY COUNCIL.

26 DO YOU SEE THAT?

27 A. YES.

28 Q. LOOKING AT THE LAST PARAGRAPH OF PAGE 3, DID -- DID

1 THIS RESOLUTION ACCURATELY DESCRIBE WHAT IT WAS THAT
2 MS. ITALIANO HAD AGREED TO SOME MONTHS BEFORE IN RESPONSE TO
3 MR. KELLEY'S PROPOSAL?

4 A. YES, IT DID. MY ONLY HESITATION IS TO MAKE CLEAR ON
5 THE RECORD THAT WHAT WAS MEMORIALIZED HERE WAS, IN FACT,
6 EXCEPT FOR THE IMPOSITION OF THE CAP, WHICH WAS NOT ARGUABLY
7 FAVORABLE TO MS. ITALIANO, BUT WHAT WAS MEMORIALIZED HERE HAD
8 ALREADY BEEN THE AGREEMENT IN EFFECT AND BEING EXECUTED SINCE
9 LATE 1997. IT WAS NOT A NEW BENEFIT FOR MS. ITALIANO AS IT
10 WAS LATER PROCLAIMED TO BE BY CERTAIN PEOPLE.

11 Q. OKAY. SO IN THE FIVE YEARS THAT TRANSPIRED AFTER
12 OCTOBER OF 1997, IS THIS THE FIRST TIME THE PROCEDURE FOR
13 MS. ITALIANO AS THE MEA PRESIDENT WAS MEMORIALIZED IN WRITING
14 BY THE CITY?

15 A. IN THIS RESOLUTION FORM, YES.

16 Q. WHEN IT WAS MEMORIALIZED, IT WAS THE SAME AS IT HAD
17 BEEN ALL THE WAY BACK IN 1997?

18 A. EXACTLY. EXCEPT FOR THE CAP. THAT WAS NEW.

19 Q. LOOKING AT THIS LAST PARAGRAPH OF PAGE 3 NEAR THE
20 END, WHERE THE SENTENCE CONCLUDES THAT "THE FORMULA SHALL BE
21 BASED ON THEIR RESPECTIVE COMBINED CITY AND UNION SALARY, NOT
22 TO EXCEED THE ANNUAL BASE SALARY OF THE CITY'S LABOR RELATIONS
23 MANAGER. "

24 DID THIS MAKE AVAILABLE TO MS. ITALIANO, IF
25 CIRCUMSTANCES CHANGED, THAT SHE COULD RECEIVE TWO SALARIES AND
26 USE THAT FOR HER ULTIMATE RETIREMENT FORMULA?

27 A. BEAR WITH ME ON THIS NOW. THE -- THE NEW ARTICLE 15
28 THAT I HAVE DESCRIBED FOR PRESIDENTIAL LEAVE, THE NEW PROGRAM

inc
any
form?

1 ON A GOING-FORWARD BASIS, WAS GOING TO BE THE ONLY WAY FOR A
2 NEWLY-ELECTED PRESIDENT OF MEA TO PARTICIPATE IN SDCERS.
3 HOWEVER, THAT PROGRAM WAS AVAILABLE TO MS. ITALIANO, EVEN
4 THOUGH SHE WAS INCUMBENT UNION PRESIDENT, SHOULD HER UNION
5 WISH TO INVOKE IT; MEANING THAT AS OF JULY 1, 2002 WHEN THAT
6 WENT INTO EFFECT, HAD HER BOARD OF DIRECTORS WANTED HER TO DO
7 SO, SHE COULD HAVE GONE BACK ON THE CITY PAYROLL, RECEIVED THE
8 PAY AND BENEFITS OF HER PRIOR POSITION, WHICH WAS THE JOB TO
9 BE SAVED ON THE APPROVED LEAVE OF ABSENCE, AND IN ADDITION
10 RECEIVED WHATEVER SALARY THE UNION DEEMED APPROPRIATE TO PAY
11 HER FOR HER SERVICES, AND PAID CONTRIBUTIONS TO SDCERS ON THAT
12 UNION-PAID SALARY IN ADDITION TO THE CONTRIBUTIONS THAT WOULD
13 BE PAID ON HER CITY-PAID SALARY. THAT WOULD HAVE SAVED THE
14 UNION MONEY, COST THE CITY MONEY, AND THE MEA BOARD OF
15 DIRECTORS DETERMINED IN 2002 NOT TO INVOKE THAT THOUGH THEY
16 COULD HAVE.

17 Q. DID THIS RESOLUTION AFFECT ANYONE OTHER THAN
18 MS. ITALIANO?

19 THE COURT: YOU THINK I UNDERSTAND THAT, YOU GOT
20 ANOTHER THING COMING.

21 (LAUGHTER.)

22 MR. ROSE: WOULD YOU READ BACK THE LAST ANSWER?

23 THE COURT: NO, DON'T.

24 MR. ROSE: WOULD THAT MAKE IT BETTER?

25 THE COURT: WHAT I SAID? OH, YEAH. MARK THAT SPOT.
26 GO AHEAD.

27 ///

28 ///

Exhibit 7

RECEIVED JUL 25 1997

MEMORANDUM

SAN DIEGO MUNICIPAL EMPLOYEES ASSN.

4185 Home Avenue San Diego, CA 92105
264-6632 / FAX 264-0405 / MS-126

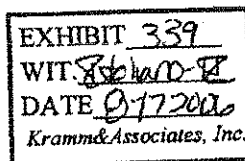
DATE: July 25, 1997
TO: Cathy Lexin, Labor Relations Manager
FROM: Judie Italiano, President/General Manager
RE: Judie Italiano's City Retirement

Per our previous discussions, I am outlining for you what I feel would be a fair settlement of my claim that I was denied the opportunity to participate in the CERS plan while on negotiated presidential leave.

In August of 1986 I requested a leave of absence to perform the duties of MEA's President on a full time basis. At the time of that leave, MEA's General Manager, Dick Barker, made a request to the Labor Relations office that I be allowed to continue my City benefits while on leave and that arrangements be made for payment. The response from the Labor Relations office, which cited Attorney John Kaheney, was that there were no provisions to allow for this type of arrangement and the appearance of allowing someone to continue benefits while being compensated by the union might be seen as a "misuse or gift of public funds" (a phrase that Kaheney was famous for).

Consequently I was unable to pay into my City retirement during my leave of absence. My SPSP and deferred compensation were frozen and I was unable to continue my health insurance.

Early 1996 I learned that for many years the City had been allowing Police Officers on presidential leave to continue City benefits including retirement. At that time I voiced my concern that I had been unfairly denied the same access to City benefits that other employee organizations had been provided. I made this known to you, Larry Grissom, and Jack McGrory.



339.1

MEA 3608

0339-0001



Now that I have all the numbers from the Retirement office I am making a request to make myself whole in retirement for the time I was denied the opportunity to participate by use of the following method:

- A. I would make a formal request to the Retirement Board to "forgive" all interest owed due to my ability to pay being unfairly denied.
- B. I would make full payment for all "employee" contributions owed by a transfer from SPSP.
- C. Have the Manager's office make arrangements to take responsibility for full payment of the "employer" portion that is owed.
- D. I would begin immediate direct payments to the Retirement office for both the employee and employer portion of my retirement while I continue on presidential leave.

I would appreciate your immediate response on this issue so we can stop the clock on the amount owed. The method of repayment I have requested to right this wrong is, in my estimation, a fair one considering this large bill would not be owed had I been granted the same opportunity to pay as POA presidents were granted.

cc: Ann Smith

339.2

MEA 3609

0339-0002



Exhibit 8

MEMORANDUM

SAN DIEGO MUNICIPAL EMPLOYEES ASSN.

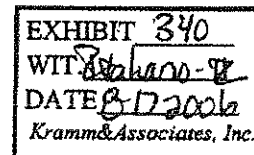
4185 Home Avenue San Diego, CA 92105
264-6632 / FAX 264-0405 / MS-126

DATE: August 21, 1997
TO: Larry Grissom, Retirement Administrator
FROM: Judie Italiano, President/General Manager
RE: Direct payment of Retirement contribution.

I am most anxious to stop the clock on the accumulating balance I owe for my retirement buy-back. To do that I must know the amount of the employer plus the employee portion of my contribution. I am requesting that you provide me that information along with the procedure for making a direct payment as quickly as possible.

It is my goal to make September be the first month I make a payment (I mean September of 1997!) and your assistance would be most appreciated.

cc Cathy Lefin



MEA 3610

0340-0001



Exhibit 9

(O-97-75)

ORDINANCE NUMBER O- 18383 (NEW SERIES)ADOPTED ON FEB 25 1997

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 1 BY AMENDING SECTION 24.0103, REPEALING SECTIONS 24.0104 AND 24.0104.1; BY AMENDING DIVISION 2 BY AMENDING SECTION 24.0201, REPEALING SECTION 24.0201.1, RETITLING AND AMENDING SECTION 24.0202, REPEALING SECTION 24.0202.1, RETITLING SECTION 24.0203, REPEALING SECTION 24.0209, AND AMENDING SECTION 24.0211; BY AMENDING DIVISION 3 BY AMENDING SECTION 24.0301, RETITLING AND AMENDING SECTION 24.0302, REPEALING SECTION 24.0304, RENUMBERING SECTIONS 24.0305 AND 24.0306 TO SECTIONS 24.0304 AND 24.0305, REPEALING SECTION 24.0307, RENUMBERING SECTION 24.0308 TO SECTION 24.0306, AMENDING AND RENUMBERING SECTION 24.0308.5 TO SECTION 24.0307, AND RENUMBERING SECTION 24.0309 TO SECTION 24.0308; BY AMENDING DIVISION 4 BY AMENDING SECTIONS 24.0402 AND 24.0403 RETROACTIVELY APPLICABLE TO JANUARY 1, 1997, AND AMENDING SECTION 24.0404; BY AMENDING DIVISION 5 BY AMENDING SECTION 24.0503, RENUMBERING SECTION 24.0503.1 TO SECTION 24.0504, AMENDING AND RENUMBERING SECTION 24.0504.1 TO SECTION 24.0505, RENUMBERING SECTION 24.0505.1 TO SECTION 24.0506, REPEALING SECTIONS 24.0514 AND 24.0516 RETROACTIVELY TO THE DATE OF OCTOBER 1, 1987, AND AMENDING SECTIONS 24.0521 AND 24.0532; BY AMENDING DIVISION 6 BY REPEALING SECTION 24.0608.1; BY AMENDING DIVISION 7 BY AMENDING SECTION 24.0706, RETITLING AND AMENDING SECTION 24.0709, AND AMENDING SECTION 24.0710.2; BY AMENDING DIVISION 9 BY AMENDING AND RENUMBERING 24.0907.1 TO SECTION 24.0907; BY AMENDING DIVISION 10 BY AMENDING SECTION 24.1005 TO REFLECT RENUMBERING OF SECTION 24.0308 TO SECTION 24.0306 WITHIN THE TEXT OF THAT SECTION, AND ADDING SECTION 24.1014; BY AMENDING DIVISION 11 BY AMENDING SECTION 24.1101, AND AMENDING SECTION 24.1114 TO REFLECT RENUMBERING OF SECTION 24.0907.1 TO SECTION 24.0907 WITHIN THE TEXT OF THAT SECTION; BY AMENDING DIVISION 12 BY AMENDING THE TITLE THEREOF, BY REPEALING SECTIONS 24.1201, 24.1202, 24.1203, 24.1204, 24.1205 AND 24.1206, AND BY REENACTING SECTIONS 24.1201, 24.1202, 24.1203, 24.1204, 24.1205,

AND 24.1206, AND ADDING SECTION 24.1207; BY AMENDING DIVISION 13 BY RETITLING AND AMENDING SECTION 24.1302, AMENDING SECTIONS 24.1304, 24.1305, AND 24.1307, AND REPEALING AND REENACTING SECTION 24.1312, ALL RELATING TO THE CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, on June 5, 1996, the Management Team of The City of San Diego and the San Diego Police Officers Association (POA) reached tentative agreement regarding changes to the retirement benefits provided by the City Employees' Retirement System ("CERS"); and

WHEREAS, on July 2, 1996, the Council of The City of San Diego approved Resolution No. R-287582 approving tentative agreements with Local 145 of the International Association of Fire Fighters ("Local 145"), the San Diego Municipal Employees' Association ("MEA"), and Local 127 of the American Federation of State, County and Municipal Employees' Association ("Local 127") regarding wages, hours, and other terms and conditions of employment for Fiscal Year 1998, and proposed benefit increase changes to CERS for all four employee organizations contingent upon an affirmative vote of the participants, and subject to approval of the City Council, CERS Board of Administration, and subject to the occurrence of various contingencies contained with the Manager's Retirement Proposal; and

WHEREAS, on June 21, 1996, the CERS Board of Administration approved the concept of funding employer contribution rates partially funded from CERS Surplus Undistributed Earnings by establishing a reserve from those Surplus Undistributed Earnings; and

WHEREAS, on June 21, 1996, the CERS Board of Administration deferred approval of funding retiree health insurance from CERS Surplus Undistributed Earnings until the affirmative passage of Proposition D on the November 5, 1996, Municipal Ballot authorizing CERS to

"Retirement System" or "this System" means the City Employees Retirement System as created by this Article, and the "1981 Pension System" means the Employees Retirement System as created by Chapter II, Article 4, Division 11.

"Undistributed Earnings Reserve" shall mean the balance remaining in the account to which the earnings to the fund are credited, after the annual distribution to the employee and employer reserve accounts in accordance with interest assumption rates established by the Board, plus accumulated earnings which have not been so distributed.

Section 2. That Chapter II, Article 4, Division 1, of the San Diego Municipal Code be and the same is hereby amended by repealing Sections 24.0104 and 24.0104.1.

Section 3. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0201, to read as follows:

SEC. 24.0201 Contribution of General Members

For General Members, the Board of Administration shall provide:

1. [No change in text.]
2. The normal rates of contribution for each Member, except Safety Members, shall be such as will provide an average Annuity at age 57½ equal to 1/120th of the Member's Final Compensation, according to the tables adopted by the Board of Administration for each year of service rendered after entering the System.
3. An employee who is granted a special leave of absence without pay in order to serve as the duly elected president of a recognized employee labor

organization, shall be permitted, if he or she so elects, to continue making contributions during the period of presidential leave in an amount prescribed in accordance with this Section 24.0201.

Section 4. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 24.0201.1.

Section 5. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by retitling and amending Section 24.0202, to read as follows:

SEC. 24.0202 Adoption of General Member Contribution Rates

The Board of Administration, based upon the advice of the Actuary, shall periodically adopt the rate of contribution of each General Member according to age at the time of entry into the Retirement System.

Section 6. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 24.0202.1.

Section 7. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by retitling Section 24.0203, to read as follows:

SEC. 24.0203 Maximum and Minimum Rates for General Members

[No change in text.]

Section 8. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 24.0209.

Section 9. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0211, to read as follows:

Exhibit 10

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				1. CERTIFICATE NUMBER: #																													
TO: CITY ATTORNEY		2. FROM: (ORIGINATING DEPARTMENT) Labor Relations/City Manager		3. DATE June 11, 1996																													
4. SUBJECT: FY 98 Labor Contract Extensions and Retirement System Changes																																	
5. FOR INFORMATION, CONTACT: (NAME & MAIL STA.) Cathy Lexin, 9A			6. TELEPHONE NO. 236-6313		7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2: <input checked="" type="checkbox"/>																												
COMPLETE FOR ACCOUNTING PURPOSES																																	
<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>FUND</td><td></td><td></td><td></td></tr> <tr><td>DEPT.</td><td></td><td></td><td></td></tr> <tr><td>ORGANIZATION</td><td></td><td></td><td></td></tr> <tr><td>OBJECT ACCOUNT</td><td></td><td></td><td></td></tr> <tr><td>JOB ORDER</td><td></td><td></td><td></td></tr> <tr><td>C.I.P. NO.</td><td></td><td></td><td></td></tr> <tr><td>AMOUNT</td><td></td><td></td><td></td></tr> </table>				FUND				DEPT.				ORGANIZATION				OBJECT ACCOUNT				JOB ORDER				C.I.P. NO.				AMOUNT				9. ADDITIONAL INFORMATION / ESTIMATED COST: Unknown at this time. <div style="text-align: right; font-weight: bold; transform: rotate(90deg);"> RECEIVED 96 JUN 13 AM 8:03 CITY CLERK'S OFFICE SAN DIEGO, CA </div>	
FUND																																	
DEPT.																																	
ORGANIZATION																																	
OBJECT ACCOUNT																																	
JOB ORDER																																	
C.I.P. NO.																																	
AMOUNT																																	
ROUTING AND APPROVALS																																	
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED																										
1	DEPARTMENT DIRECTOR	<i>Cathy Lexin</i>	6/11/96		CITY MANAGER	<i>[Signature]</i>	6-11-96																										
	EOCP <i>NR</i>	<i>[Signature]</i>	6/11/96		AUDITOR																												
					CITY ATTORNEY																												
					ORIGINATING DEPARTMENT	<i>Cathy Lexin</i>	6/11/96																										
					MGR. DOCKET COORD.	<i>aw</i>	6/12/96																										
					RULES COMMITTEE	<input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	Date 6/25/96																										
						Refer to																											
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTION(S) <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)																																	
Authorizing FY 98 Labor Contract Extensions and Retirement System Changes.																																	
11a. MANAGER'S RECOMMENDATIONS: Approve the Resolution																																	
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.) City Charter Section 143.1 provides that adoption of an ordinance affecting retirement benefits is subject to approval by a majority vote of the members of the system. This action will be subject to an affirmative vote of the members of the system, which shall be scheduled for August 1998.																																	

R- 287582 JUL 02 1996

The Management Team of the City of San Diego has met and conferred with Local 145 of the International Association of Firefighters (Local 145), with the Municipal Employees' Association (MEA), and with Local 127 of the American Federation of State, County and Municipal Employees' Association (Local 127) regarding wages, hours and other terms and conditions of employment for the respective employees that each represents. Pursuant to these negotiations, the Management Team has agreed to the provisions summarized in the tentative agreements attached hereto with each of these three labor organizations for FY98 Memorandum Of Understanding extensions.

In addition, the Management Team has met and conferred with POA, Local 145, MEA and Local 127 regarding changes to the San Diego City Employees' Retirement Systems (CERS). All four labor organizations have tentatively agreed to the terms of this proposal subject to various contingencies contained therein. Subsequent to this approval by the City Council, and an affirmative vote of the retirement system members, related to retirement benefits, the terms of these agreements will be incorporated into Memorandum of Understanding language for Council approval, and the retirement systems changes will be incorporated into Municipal Code revisions for approval of necessary Ordinances by the Council.

Fiscal Impact: Unknown at this time.

R 287582

SUBJECT: FY 98 Labor Contract Extensions and Retirement System Changes

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

SIGNATURES:

Cathy Legum
ORIGINATING DEPT. HEAD

[Signature]
CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

(R-96-1593)

RESOLUTION NUMBER R- 287582ADOPTED ON JUL 02 1996

WHEREAS, the Management Team of The City of San Diego has met and conferred with Local 145 of the International Association of Fire Fighters ("Local 145"), the San Diego Municipal Employees' Association ("MEA"), and Local 127 of the American Federation of State, County and Municipal Employees' Association ("Local 127"), regarding wages, hours, and other terms and conditions of employment, and

WHEREAS, the Management Team has reached a tentative agreement on changes to the existing Memorandum of Understanding ("MOU") with each of the employee organizations; and

WHEREAS, the tentative agreement with each organization will result in extensions to the existing MOU's through Fiscal Year 1998; and

WHEREAS, the Management Team also met with the Police Officers Association ("POA"), Local 145, MEA and Local 127, regarding changes to increase the retirement benefits provided by the City Employees' Retirement System ("CERS"); and

WHEREAS, each of the four (4) employee organizations has tentatively agreed to the proposed benefit increase changes subject to the occurrence of various contingencies contained within the proposal; and

WHEREAS, subject to approval of the City Council, CERS Board of Administration, and an affirmative vote of the participants of CERS, the terms of the retirement proposal will be incorporated

into the MOU with each of the four (4) employee organizations,
and into the San Diego Municipal Code where necessary; NOW,
THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego,
that the Council approves the tentative agreements with Local
145, MEA and Local 127 regarding wages, hours, and other terms
and conditions of employment for Fiscal Year 1998.

BE IT FURTHER RESOLVED, that the Council approves the
proposed benefit increase changes to CERS contingent on an
affirmative vote of the participants.

APPROVED: JOHN W. WITT, City Attorney

By Sharon A. Marshall
Sharon A. Marshall
Deputy City Attorney

SAM:jrl
06/11/96
Or.Dept:Mgr.
R-96-1593
Form=r-t

Management Proposal to MEA for a FY98 Extension of MOU

Following is Management's Proposal related to a one year extension of the current MOU between the City of San Diego and the Municipal Employees Association (MEA). This proposal is conditioned upon MEA also accepting the terms of the Manager's Proposal of CERS Retirement System Changes Dated June 4, 1996, attached hereto (CERS Proposal); conditioned upon the support of MEA for the CERS Proposal when the proposal is considered by the CERS Board and City Council; support of MEA when the CERS Proposal is presented to CERS Plan Participants for a Vote; conditioned upon confirmation by the CERS Actuary as to the costs of changes contained in the Proposal, and approval of the CERS Fiduciary Council, City Attorney and City Fiduciary Council including among other issues IRS 415 issues; and final approval of the CERS proposal and this proposal by the City Council.

1. Salary: +4% 12/27/97
+5% for Legal Secretaries, Sr. Legal Secretaries,
Executive Secretaries and Principal Clerks effective 1/1/98.
2. Flex Article: Reopener in FY98 on Flex Value and design including discussions regarding the use of Retiree Health Insurance Trust
3. EMT Pay: Effective July 1, 1997, all Lifeguard II, Lifeguard III, Lifeguard Sergeants and Lifeguard Lieutenants who are EMT certified will receive an additional 2% of base pay. Effective July 1, 1997, a random drug/alcohol testing program comparable to Fire Department's design will be implemented.
4. Annual Leave:
 - a. Cease to accrue language effective 7/1/97 modified to address circumstances in which employee was not able to reduce leave balance, after selling back maximum allowed hours, due to having requests for leave denied.
 - b. Eliminate minimum hrs required to sell 125 hrs pay in lieu
 - c. Increase maximum accumulation for hires after 7/1/93 from 250 hrs to 350 hrs
8. Employee's retirement contribution: General Members increases by .55% on 12/27/97 and by .55% on the date of MEA's general salary increase in FY99 to pay employee's half of normal cost of retirement formula improvements going into effect on January 1, 1997. Lifeguard Members retirement contribution increases by .245% on 12/27/97 and by .245% on the date of MEA general salary increase if FY99.

9. 4/10 Work Schedules for Lifeguards

The City agrees to develop a plan to implement 4/10 work schedules for Lifeguards with the understanding that any such work schedule would have no cost impact to the City, nor negative impact on service level. If such a plan can be agreed to, the City will implement a pilot 4/10 schedule. The City will retain the unilateral right to return to the prior schedule should costs or service levels be negatively impacted.

10. Article 10 - Personnel Practices

E.

1. Performance Reports: Add - The approval for late EPR's should be submitted to employee in writing, and include reasons for the delay and approval.

City rejects MEA proposal that approvals for late EPR's are not to be granted for EPR's for less than satisfactory ratings.

2. Add: An employee shall only be rated by the immediate supervisor. If the first line supervisor is unavailable, the next higher level supervisor will be the rater. The rater should consult with the OCA supervisor(s) during the rating period for input.

City generally agrees to MEA proposal that employees have a Performance Plan Conference when employee is assigned to a new supervisor, however this should apply only when a new permanent supervisor is assigned (not for temporary assignments, light duty assignments, short term OCA's etc).

City accepts MEA proposal that Performance Development Plans for Satisfactory or better employees must be subject to mutual agreement.

The City agrees to a joint committee to discuss guidelines and trainings related to incorporation of performance based measurements into EPR's. MEA shall have three representatives on this committee.

11. Special Salary Adjustments: MEA proposals to the Civil Service Commission for studies of special salary increases may only be submitted with Management concurrence.

12. Article 28: Flexible Benefits

City agrees to continue to pay the Flex Allocation up to 12 months for employees on TTD or Vocational Rehabilitation, however only for employees on internal TTD or Vocational Rehab.

13. Article 38: Transportation Programs
Mileage reimbursement rate shall be \$.32 effective 7/1/96 and \$.33 effective 7/1/97.

City agrees to providing mileage checks within 2 weeks of submitting timely and accurate requests.
14. Article 57: Overtime
City and MEA will prepare a *Scheduled Overtime Distribution Procedure* for the Bureau of Lifeguard Services by June 30, 1996.
15. Article 59: LTD/Industrial Leave
City agrees to base LTD benefit on earnings of employee at time employee is removed from work due to disability.
16. Article 81: Training Reimbursement
City agrees to MEA proposal providing increased flexibility of tuition reimbursement to cover training situations not currently covered.
17. Article 88 (new): Voluntary Certification Pay
The City and MEA agree to meet and confer regarding the City's proposed voluntary certification program. If agreement is not reached, there shall be no implementation of the program through the term of this MOU.
18. Article 89 (new): Pilot Performance Management Program
The City and MEA agree to meet and confer regarding the City's proposed Pilot Performance Management Program. If agreement is not reached, there shall be no implementation of the program through the term of this MOU.
19. 5% Special Assignment Pay: Effective July 1, 1997, Water Utility Supervisors who are assigned to confined space entry teams for each pay period in which the employee was required to assist with, supervise and/or make one or more confined space entries. It is also the City's intent to provide dry suits and Hepatitis B shots for these employees July 1, 1996.

Cathy Lefevre
City of San Diego

6/5/96
Date

Judith M. Italiano
MEA

6/5/96
Date

City Employees Retirement System

June 4, 1996

Proposal

It is the City Manager's intent to recommend changes to the City Employees Retirement System related to: (1) retiree health insurance, (2) retirement plan benefits, (3) employer contribution rates, and (4) retirement system reserves. These proposed changes to plan benefits, retiree health insurance, employer rates and system reserves will require approval of the City Council, CERS Board of Administration as well as an affirmative vote of plan members. The City Manager's proposal is being reviewed by outside fiduciary counsel engaged through the City Attorney's Office and has been presented to the CERS Board's fiduciary counsel and actuary for review and advice to the Board. All proposed changes are conditioned upon and subject to final approval by fiduciary counsel, City Council approval, Retirement Board approval, vote of plan participants, and confirmation of cost estimates by the System's actuary.

The interrelationship of these various issues to each other necessitate that the entire proposal be considered and acted upon concurrently. Furthermore, the substantial financial implications to the City compel that certain actions occur in time for Fiscal Year 1997 budget decisions. Necessary ordinances can be prepared for formal amendments to the Municipal Code subsequent to actions by appropriate bodies (City Council, CERS Board, Plan Participants, Employee Unions). Following are the proposed changes.

Issue No. 1 - RETIREE HEALTH INSURANCE

- A. Move the Retiree Health Insurance from the City to CERS no later than June 30, 1997.
- B. Pay for Retiree Health Insurance for FY 97 from the Retiree Health Insurance Trust.
- C. Increase cap for POA and Local 145 Retiree Health Plans from \$4500/year to \$4995 only for FY97.
- D. Establish Pre-1980 Retiree Health Insurance as a permanent benefit at a level of \$600 per year.
- E. During FY97, a Task Force of City Manager, CERS Board and Labor Organizations working with actuaries, consultants and legal counsel can develop the necessary documentation to design a tax exempt health insurance benefit to be effective July 1, 1997. The Task Force will recommend benefit level subject to approval by CERS, City Council, and issue an RFP for selection of a common provider. POA and Local 145 will assume full responsibility for any incurred claims under existing health insurance policies.
- F. The existing City Health Insurance Trust (@ \$12.5m) will be used to pay for FY96 Retiree Health Insurance.

- G. CERS will establish a Health Insurance Reserve within CERS. Each year, the upcoming year's projected cost of retiree health insurance will be transferred from undistributed earnings and credited to the Health Insurance Reserve.
- H. Actual premium costs and administrative charges will be charged to the Health Insurance Reserve on a pay-as-you-go basis and will not be actuarially funded.

Issue No. 2 - CERS BENEFIT CHANGES

- A. Eliminate the existing requirement to offset Disability Income.
- B. **Purchase of Service Credit:** Continue the existing service credit provisions related to refunds, probationary periods, 1981 Plan waiting period and Military & Veteran Code; incorporate all others into a new general provision of a five (5) year purchase of service credit feature, which would also be available to 1/2 time and 3/4 time employees. Employees would pay into the retirement fund an amount, including interest, equivalent to the employee and employer full cost of such service.
- C. Increase the calculation of the 13th Check for Pre-10/6/80 retirees from \$30 per creditable year of service to \$60 per creditable year of service, and to \$75 per creditable year of service for Pre-12/31/71 retirees.
- D. Increase the benefit to General Members for industrial disability retirements from 33-1/3% to 50%; and increase the General Member formula as described below.

General Member Formula

Age	Present Factor	Proposed Factor
55	1.48%	2.00%
56	1.56%	2.00%
57	1.63%	2.00%
58	1.72%	2.00%
59	1.81%	2.08%
60	1.92%	2.16%
61	1.99%	2.24%
62	2.09%	2.31%
63	2.20%	2.39%
64	2.31%	2.47%
65+	2.43%	2.55%

Cost of General Member Improvements:

	<u>Employer-Paid</u>	<u>Employee-Paid</u>	<u>Total Cost</u>
Normal Cost	+1.11%	+1.10%	+2.21%
<u>Past Liability</u>	<u>+1.43%</u>		<u>+1.43%</u>
TOTAL COST	+2.54%	+1.10%	+3.64%

Past liability for these two benefit improvements will be paid for by the City through excess earnings.. Normal cost (prospective costs) will be paid for equally by employee and employer. The employer's share will be added to the actuarial rate (PUC) calculations beginning mid-year FY97. The employee's share will be paid from excess earnings for FY97, and by increasing the employee's contribution in FY98 and FY99 as follows: +.55% on 12/27/97 and +.55% effective the earliest date in FY99 that General Employees receive a salary increase.

- E. Improve Lifeguard Safety Member Formula as follows and establish a 90% cap. Any employee's who are eligible for a percentage above 90% on 4/1/97, the effective date of implementation of the DROP will be frozen at their rate in effect on 4/1/97. Past liability for this benefit improvement will be paid for by the City through excess earnings. Normal cost (prospective costs) will be paid for equally by employee and employer. The employer's shall will be added to the actuarial rate (PUC) calculations beginning mid-year FY97. The employee's share will be paid from excess earnings in FY97, and by increasing the employee's contribution in FY98 and FY99 as follows: +.245% on 12/27/97 and +.245% effective the earliest date in FY99 that Lifeguard employees receive a salary increase.

Age	Present Factor	Proposed Factor
50	2.00%	2.20%
51	2.10%	2.32%
52	2.22%	2.44%
53	2.34%	2.57%
54	2.47%	2.72%
55+	2.62%	2.77%

Cost of Lifeguard Safety Member Improvements:

	<u>Employer-Paid</u>	<u>Employee-Paid</u>	<u>Total Cost</u>
Normal Cost	+. 49%	+. 49%	+. 98%
<u>Past Liability</u>	<u>±. 53</u>		<u>±. 53%</u>
TOTAL COST	+1.02%	+. 49%	+1.51%

- F. Improve Police and Fire Safety Member Formula as follows and establish a 90% cap. Any employee's who are eligible for a percentage above 90% on 4/1/97, the effective date of implementation of the DROP will be frozen at their rate in effect on 4/1/97. Past liability for this benefit improvement will be paid for by the City through excess earnings. Normal cost (prospective costs) will be paid for equally by employee and employer. The employer's shall will be added to the actuarial rate (PUC) calculations beginning mid-year FY97.

Age	Fire Factor	Police Factor	Proposed Factor for Fire & Police
50	2.20%	2.50%	2.50%
51	2.32%	2.54%	2.60%
52	2.44%	2.58%	2.70%
53	2.57%	2.62%	2.80%
54	2.72%	2.66%	2.90%
55+	2.77%	2.70%	2.9999%

Cost of Safety Member Improvements:

<u>FIRE</u>	<u>Employer-Paid</u>	<u>Employee-Paid</u>	<u>Total Cost</u>
Normal Cost	+ .73%	+ .72%	+1.45%
<u>Past Liability</u>	<u>+ .91%</u>		<u>+ .91%</u>
Total	+1.64%	+ .72%	+2.36%

Fire employees will pay one-half of the normal cost over two years as follows: +.36% on 4/1/98 and +.36% on 1/1/99.

<u>POLICE</u>	<u>Employer-Paid</u>	<u>Employee-Paid</u>	<u>Total Cost</u>
Normal Cost	+ .47%	+ .47%	+ .94%
<u>Past Liability</u>	<u>+ .91%</u>		<u>+ .91%</u>
Total	+1.38%	+ .47%	+1.85%

Police employees will pay one-half of the normal cost over two years as follows: +.235% on 1/1/98 and +.235% on 1/1/99.

- G. The City agrees to implementation of a *Deferred Retirement Option Plan* (DROP) effective April 1, 1997, on the condition that such a plan is approved by the City Attorney's Office as legal under applicable Federal, State and Local laws and regulations, and that such a plan would have no cost impact to the City nor CERS. Employees may participate in this program for up to five (5) years. At the end of three (3) years the evaluate the impact of this program and reserves the unilateral right to prospectively terminate the program. Employee's who elect to participate in DROP will cease participation in CERS, and will participate in SPSP-type plan with a mandatory 3.05% employee contribution matched by 3.05% employer contribution.

Issue No. 3 - EMPLOYER CONTRIBUTION RATES

- A. Employer rates will be calculated using the Projected Unit Credit (PUC) method. For FY96 and FY97, the City will pay the budgeted rates (bifurcated rate) of 7.08% (blended rate) and 7.33% respectively, and increase the rate paid by 0.50% each year until the rate paid reaches the EAN calculated rate. At such time as the PUC and Entry Age Normal (EAN) rates are equal, the System will convert to EAN.

Employer Contribution Rate Stabilization Plan

Period	PUC Rate	City Paid Rate	Difference %	Difference \$
FY96	8.60%	7.08%	1.52%	\$5.33m
FY97	10.87%	7.33%	3.79%	\$13.88m
FY98	12.18%	7.83%	4.35%	\$16.67m
FY99	12.18%	8.33%	3.85%	\$15.40m
FY2000	12.18%	8.83%	3.35%	\$14.00m
FY2001	12.18%	9.33%	2.85%	\$12.45m
FY2002	12.18%	9.83%	2.35%	\$10.72m
FY2003	12.18%	10.33%	1.85%	\$8.82m
FY2004	12.18%	10.83%	1.35%	\$6.73m
FY2005	12.18%	11.33%	.85%	\$4.43m
FY2006	12.18%	11.83%	.35%	\$1.91m
FY2007	12.18%	12.18%	-0-	-0-
FY2008	13.00	13.00%	-0-	-0-
TOTAL				\$110.35*

*\$110.35 million paid from excess earnings includes \$71.31 million in contributions as a result of benefits improvements recommended herein.

- B. The City will pay the agreed to rates shown above for FY96 through FY2007. The difference between the actuarially calculated rate and the agreed to rate would be transferred from the Stabilization Reserve to the Employers Contribution Reserve. If the amount in the Stabilization Reserve is insufficient to pay the difference in contributions or the funded ratio of the System falls by more than 10% below the funded ratio calculated at the June 30, 1996 valuation, this plan will sunset the year following the actuarial valuation which shows this funded ratio.
- C. There will be no changes in actuarial assumptions or actuarial methodology which would impact employer contribution rates prior to July 1, 2007. If the CERS Board feels its fiduciary responsibility requires a change to actuarial assumptions prior to that date due to extraordinary circumstances, the increase in rate will be added to the PUC rate to be achieved through the phased-in rate increases.

Issue No. 4 - SURPLUS UNDISTRIBUTED EARNINGS AND RESERVES

- A. Create a Contingency Reserve not to exceed 1% of System assets at market value. If undistributed earnings are insufficient, funds from the Contingency Reserve will be used, in priority order after crediting the employee and employer reserves and funding the Systems budget, to: (1) pay the insurance premium, (2) pay the 13th check. If the Health Insurance reserve and the contingency reserve were insufficient, the city would be responsible for that year's health insurance premium.
- B. Create a Stabilization Reserve not to exceed \$75 million, as follows: (1) close and transfer the existing "earnings stabilization reserve (\$10.7 million), (2) credit this reserve annually with 50% of "surplus" undistributed earnings. All surplus undistributed earnings will be transferred to the employer contribution reserve when and if the \$75 million limit is reached. These assets will be held outside of assets used for actuarial valuation.

Exhibit 11

LAW OFFICES OF
TOSDAL, LEVINE, SMITH & STEINER
A PROFESSIONAL CORPORATION
600 'D' STREET, SUITE 2300
SAN DIEGO, CALIFORNIA 92101-4508

THOMAS TOSDAL
STANLEY L. LEVINE
ANN M. SMITH
FERN M. STEINER
MICHAEL K. WAX

BYRON S. GEORGIU
OF COUNSEL

TELEPHONE (619) 239-7200
TELECOPIER (619) 239-6048

May 17, 1996

Via Facsimile: 236-6067
Ms. Cathy Lexin
Labor Relations Manager
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Re: MEA'S PROPOSAL FOR RESOLUTION OF RETIREMENT SYSTEM ISSUES
AND CONTRACT EXTENSION COVERING FY98

Dear Ms. Lexin:

What follows is the proposal which MEA's Negotiating Team has authorized me to submit for the CITY's consideration in connection with the on-going discussions regarding retirement system issues and the invitation to discuss an extension of the current MOU for FY98.

Since this submittal is written, certain preliminary remarks are in order as would be made in connection with an oral presentation.

I cannot state strongly enough how committed MEA's leadership and Negotiating Team are to the following outcomes: (1) a vast improvement in the retirement formula for general members in view of the resources available to the system [which resources constitute participants' money], and in view of the richness of the present and projected benefits for safety members by comparison; and (2) parity in general salary increases for all CITY employees regardless of job classification.

I also cannot over-emphasize that the level of employee scepticism and distrust regarding any tampering with funding methods related to the retirement system is enormous and will require a yeoman's effort by every person associated with MEA to overcome. MEA will not undertake this formidable task unless the gains in benefit levels for the employees MEA represents are clearly respectable and credible rather than de minimus. Frankly, at this juncture, the proposal to increase the general member's formula from 1.48% to 1.75% at age 55 is de minimus when contrasted with a proposed safety formula of 3% at age 55 and 2.74% at age 50.

The Negotiating Team has taken all of the foregoing into consideration in formulating the proposal which follows, as well as the reality that CITY has agreed to spend an additional \$3 million

from the FY 97 general fund in order to give police officers a 3% general salary increase 6 months ahead of the same increase for the employees we represent, and in order to give the vast majority of CITY's police officers a shift differential which represents a significant "general salary increase."

PROPOSAL

(1) Retirement

- * Formula for general members to be improved to a factor of 2.24% at age 55, with proportionate increases for each additional year through age 65;

- * Past and prospective liability for the cost of this formula improvement to be borne entirely by CITY and/or system;

- * No cap on amount of retirement benefit;

- * Formula for lifeguards and amount of offset to be increased to same level as enjoyed by firefighters now and in the future;

- * All other improvements in benefits as proposed in CITY's May 2nd document, including but not limited to those additional benefits not therein described which CITY extends to safety members (except as to formula);

- * MEA's active participation in Task Force re health insurance issues.

(2) General Salary Increase

- * 4% effective July 1, 1997

(3) Other Issues [Note: These are not stated in "priority" order.]

- * No restrictions for FY 97-98 on MEA's right to bring forward special salary adjustment/new class requests to the Civil Service Commission for action;

- * Increase in mileage reimbursement to be proposed based on analysis in progress; reimbursement checks must be presented to employee within 2 weeks of employee's submittal to supervisor;

- * Reopener for FY98 regarding Flexible Benefit Plan dollar value and reopener to permit MEA to offer plan design/benefit changes related to the plans MEA sponsors;

- * Add cost of bicycle lockers as permissible subsidy under transportation incentives;

Page 3.

- * Improvement in reimburseability of seminar/training events to be proposed based on analysis in progress;

- * Reinstate CITY's payment of health insurance premiums for employees injured on the job [and otherwise eligible for flexible benefits] while receiving temporary total disability or vocational rehabilitation benefits;

- * Calculate LTD benefits by reference to the basic bi-weekly earnings in effect for the employee who is injured or ill on the day he/she is removed from work due to the disabling condition;

- * Implement 4/10 schedule for lifeguards, excluding 24-hour shifts;

- * Reopener for FY98 regarding Uniform Allowance and Reimbursement issues;

- * Clarifications needed regarding employees' eligibility for shift differential in Police Department under current MOU terms;

- * Include CITY's proposed AR re Competition in MOU;

- * Modified agency shop to protect MEA's legitimate institutional needs for stability and budget-planning [akin to CITY's needs for stabilization and contingency reserves];

- * Additional language proposals regarding performance reports, appeal timelines and analysts to be submitted.

We believe that this proposal is comprehensive and includes reference to all issues, even if specifics are lacking, in order to alert you regarding at least the subject matter. However, we did give the Negotiating Team until Tuesday to ascertain by informal dialogue in the workplace whether or not there are any other issues of sufficient importance that we must raise them now in connection with premature meet and confer on a contract extension.

We shall look forward to meeting with you on Monday, May 20th and will confirm the time with you by the close of business today.

Sincerely,


Ann M. Smith

END

Exhibit 12

Report of the Audit Committee of the City of San Diego

**INVESTIGATION INTO THE
SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE**

AUGUST 8, 2006

ARTHUR LEVITT, JR.

LYNN E. TURNER

TROY A. DAHLBERG

KROLL

WILLKIE FARR & GALLAGHER_{LLP}

REPORT OF THE AUDIT COMMITTEE OF THE CITY OF SAN DIEGO:

Investigation into the San Diego City Employees' Retirement System and the City of San Diego Sewer Rate Structure

EXECUTIVE SUMMARY

Overview

Evidence made available in this investigation demonstrates numerous failures of San Diego City government – on the part of government officials and outside professional “gatekeepers” alike – to conform to the law, to adhere to principles of sound governance and financial reporting, and to protect the financial integrity of the City’s pension system and thereby the welfare of the City itself. In addition, the evidence demonstrates that City officials deliberately failed to obey legal requirements as to the allocation of costs with regard to the City’s sewage treatment with the effect that San Diego homeowners were improperly overcharged on their monthly sewage bills with the excess being unlawfully used to subsidize the sewage costs of large industrial users. The evidence demonstrates not mere negligence, but deliberate disregard for the law, disregard for fiduciary responsibility, and disregard for the financial welfare of the City’s residents over an extended period of time. Among the consequences, the City now faces an unfunded actuarial pension liability of \$1.4 billion and an inability to gain access to public financial markets. Among the laws violated were the California Constitution, the San Diego City Charter, the San Diego Municipal Code, and the federal securities laws.

In particular, the evidence demonstrates the following:

- The City’s pension system was not brought to a crisis merely as a result of abnormally low investment returns. Nor was the system brought to a crisis as a result of a “perfect storm” of unpredictable catastrophes. What brought the system to a crisis was a number of completely foreseeable financial challenges to a pension system debilitated by years of reckless and wrongful mismanagement involving any number of City and pension board officials.
- In enacting the pension system modification commonly referred to as “Manager’s Proposal 1” or “MP-1,” the City’s pension board and the City acted illegally and improperly and thereby allowed the City, with full knowledge and acquiescence of numerous participants in the approval process, to avoid financial obligations imposed by state and local law.
- In enacting MP-1, the City pension board, with the active encouragement of City officials, reduced the flow of funds to the City’s pension system in order to benefit the City while creating no compensating benefit for the pension system itself. In so doing, the City pension board violated its fiduciary responsibilities to protect

the financial stability of the system and its independence from political influence.

- With the active encouragement of City officials, the City pension board also violated its fiduciary duties with the passage of the pension system modification commonly known as "Manager's Proposal 2" or "MP-2."
- The passage of MP-2 was unlawful for a number of reasons including that it was predicated upon the fiction that the modification would provide some benefit to the City pension system. In fact, the effect of MP-2 was to further erode pension system viability and the supposed benefits to the pension system from MP-2 were illusory.
- The approval of MP-2 was obtained only through the award of new retiree pension system "benefits," one of which, when stripped of its descriptive veneer, was made available only to a single individual then serving on the pension board whose support was viewed as critical to the passage of the MP-2 modification.
- The City further eroded the financial soundness of its pension system by using pension system assets to finance City retiree healthcare costs.
- Subsequent to the enactment of MP-1 and MP-2, the pension board made false and misleading public statements to disguise the extent to which pension system assets would be insufficient to pay the promised benefits to City retirees.
- Beyond violations of law as to its pension system, the City knowingly failed to comply with federal and state requirements applicable to its municipal wastewater system which mandated that sewer rates reflect the costs of treating sewage and be proportionately allocated to residential and industrial users. Not only did this result in City homeowners being overcharged on their monthly bills for sewage costs with the excessive payments being used to subsidize the City's industrialized water users; the City thereby breached arrangements with the state and rendered itself liable for the return of \$265 million in state funds.
- The City's derelictions as to both its pension and wastewater treatment systems resulted in numerous violations of the federal securities laws as the City repeatedly obtained money from public investors through financial statements and related disclosures that were false.
- Among its fraudulent misrepresentations to investors, the City (1) falsely claimed that it was making contributions to its pension system at actuarially determined rates, when in fact it was not; (2) falsely claimed that it was using an "excellent method" of pension funding when in fact its funding method was not in accordance with legal requirements; (3) falsely stated that the City had amended its municipal code to accommodate the pension system modification known as MP-1 when in fact it had not; (4) failed to

Until 1996, SDCERS had built-in protection against the consequences of this kind of miscalculation.⁴⁸⁷ To the extent that it was depleting earnings needed to maintain the long-term stability of the retirement system by using them to pay current benefits, the effect of this profligacy would show up in a growing pension funding gap. Although this situation was not ideal, it at least required City payments to increase in direct response to any depletion of SDCERS assets. This automatic rebalancing mechanism was eliminated in 1996.⁴⁸⁸

B. Manager's Proposal 1

By mid-2002, two years of weak and even negative investment returns, combined with significant new unfunded pension benefit obligations, had pushed SDCERS and the City to a crisis.⁴⁸⁹ The temporary, badly-flawed "fix" for the crisis – MP-2 – won grudging approval only at the cost of a lot of short tempers and frayed nerves, and the "fix" itself quickly came undone under the pressure of litigation, a wave of disclosures of alarming financial information, and increasingly strident criticism of the City's management of its pension obligations. It is tempting to look at 2002 and 2003 as a period in which a "perfect storm" of unpredictable events came together to create a crisis, to which different parties then responded with different degrees of candor, professionalism, and regard for the public interest.

In fact, what brought SDCERS and the City to a crisis in 2002 and 2003 was not a "perfect storm" of unpredictable catastrophes, but a number of completely foreseeable financial challenges to a system debilitated by years of reckless mismanagement. The bear market of 2000 to 2003 was no more unusual in its intensity and duration than the eight-year long bull market that preceded it, and San Diego's package of employee retirement benefits does not appear to be unusually generous or expensive. Moreover, the whole point of financial planning is to be able to weather hard economic times. External events beyond the City Manager's control do not explain the crisis of 2002. Deliberate illegal and imprudent actions taken years before do.

The starting point is MP-1. We conclude that, for any one of a number of independent reasons, the SDCERS Board and the City acted illegally and improperly in enacting MP-1, which allowed the

⁴⁸⁷ Until 1996, the City's annual contribution was required to include a component sufficient to pay off any UAAL over an amortization period of 30 years. Overspending of system assets on current benefits would increase the UAAL, but this in turn would create a step-up in the City's annual payment obligation. Governmental Accounting and Financial Reporting Standards, Vol. II, GASB 27 § 10(f) (June 30, 2005).

⁴⁸⁸ San Diego City Council Resolution R-287582 (July 2, 1996); Minutes, SDCERS Board Meeting at 31 (June 21, 1996).

⁴⁸⁹ Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 2002, at 13-14 (Jan. 9, 2003).

City, with the full knowledge and acquiescence of all participants in the approval process, to avoid financial obligations imposed by state and local law and the fiduciary duties of the SDCERS Board.

The California Constitution, which trumps all other state and local legislation, guarantees to public employees an “actuarially sound retirement system.”⁴⁹⁰ Although whether or not a retirement system is actuarially sound is a question of fact to be determined under the circumstances of each case,⁴⁹¹ the *Wilson* court struck down as unconstitutional a proposed change in the State’s method of funding the retirement system for State employees that bears strong similarities to MP-1. In *Wilson*, the State, because of budgetary constraints, sought to reduce its annual contributions to the retirement system by switching from a level contribution system, like that employed by San Diego before MP-1, under which retirement obligations were fully funded on a current basis, to one in which retirement obligations were funded one year in arrears.⁴⁹² The California Supreme Court held that it could not constitutionally do so.

In reaching this conclusion, the *Wilson* court relied expressly on a declaration by Richard Roeder, the father of the SDCERS actuary.⁴⁹³ Richard Roeder maintained in *Wilson* that a change in funding that deferred the employer’s payment obligation by one year undermined the actuarial soundness of the system because, in light of the deferral, “greater contributions would be required from future taxpayers.”⁴⁹⁴ In short, what *Wilson* found decisive was that the State’s funding proposal had the effect of shifting *present* retirement costs onto *future* taxpayers.⁴⁹⁵ This feature made the proposal actuarially unsound and, as a result, unconstitutional.

Wilson did not purport to announce a universal standard of actuarial soundness, and there is no single, settled definition of the term in either the law or the actuarial literature. Actuarial soundness requires funding the current costs of future obligations fully in the present, rather than leaving them to be absorbed by future contributors. The Navigant Report quotes with approval one working definition:

The financial objective of the pension plan shall be to establish and receive contributions which will remain approximately level from year to year and will not have to be increased for future generations of citizens. The objective is achieved when contributions received each year by the pension

⁴⁹⁰ *Board of Administration v. Wilson*, 52 Cal. App. 4th 1109, 1135 (Cal. Ct. App. 1997) (holding that the California Constitution protected a state employee’s “contractual right to an actuarially sound retirement system.”).

⁴⁹¹ *Board of Administration v. Wilson*, 52 Cal. App. 4th 1109, 1139 (Cal. Ct. App. 1997).

⁴⁹² *Board of Administration v. Wilson*, 52 Cal. App. 4th 1109, 1117 (Cal. Ct. App. 1997).

⁴⁹³ *Board of Administration v. Wilson*, 52 Cal. App. 4th 1109, 1141 (Cal. Ct. App. 1997).

⁴⁹⁴ *Board of Administration v. Wilson*, 52 Cal. App. 4th 1109, 1141 (Cal. Ct. App. 1997).

⁴⁹⁵ *Board of Administration v. Wilson*, 52 Cal. App. 4th 1109, 1141 (Cal. Ct. App. 1997).

Roeder expressly concluded, as of June 30, 1997, through June 30, 2001, that SDCERS was actuarially sound, for reasons stated below, we conclude he was either mistaken or was pressured into declaring a belief that he did not in fact have.⁵⁰²

Even if MP-1 were permitted by the California Constitution, however, it would still need to be lawful under the San Diego City Charter, and the argument is quite strong that it was not.⁵⁰³ The City Charter provides in relevant part:

The retirement system herein provided for shall be conducted on the contributory plan, the City contributing jointly with employees affected thereunder. Employees shall contribute *according to the actuarial tables adopted by the Board of Administration* for normal retirement allowances . . . The City shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, *as certified by the actuary . . . The mortality, service experience or other table calculated by the actuary and the valuation determined by him and approved by the board shall be conclusive and final, and any retirement system established under this article shall be based thereon.*⁵⁰⁴

The Charter sets out two requirements: (1) the City's contributions must be "substantially equal" to employee contributions; and (2) the employee contributions, that the City must match, must be calculated "according to the actuarial tables adopted by the Board."⁵⁰⁵ And, the Charter concludes, the entire system must be "based" on conclusive and final tables and valuations determined by the actuary and approved by the Board.⁵⁰⁶

The requirement that the City's contributions be "substantially equal," rather than "identical," to employee contributions arguably gives the City some flexibility to "smooth" its payments by

⁵⁰² Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 1997, at 17 (Jan. 16, 1998); Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 1998, at 18 (May 5, 1999); Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 1999, at 17 (Feb. 14, 2000); Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 2000, at 19 (March 8, 2001); Gabriel, Roeder, Smith & Co., San Diego City Employees' Retirement System Annual Actuarial Valuation June 30, 2001, at 17 (Feb. 12, 2002). Mr. Roeder admitted at a SDCERS Board meeting held in 1996 that under MP-1, the System's liabilities would "be borne by the future generation." Minutes, SDCERS Board Meeting at 16 (June 11, 1996).

⁵⁰³ In fact, in connection with a lawsuit brought by the San Diego Police Officers' Association ("SDPOA") against Mr. Aguirre, SDCERS, various Council members, various City officials, and other unnamed defendants, SDCERS admitted that the City failed to fund the pension system in accordance with City Charter, art. IX, § 143. SDCERS' Answer to SDPOA's Third Amended Complaint, *San Diego Police Officers' Association v. Aguirre*, No. 05 CV 1581H, at ¶ 47 (S.D. Cal. Apr. 17, 2006).

⁵⁰⁴ San Diego City Charter art. IX, § 143 (emphasis added).

⁵⁰⁵ San Diego City Charter art. IX, § 143.

⁵⁰⁶ San Diego City Charter art. IX, § 143.

In November 2002, the City amended Section 24.0801 of the Municipal Code to provide:

The City will contribute to the Retirement Fund, on behalf of Members employed by the City, the amount agreed to in the governing Memorandum of Understanding between the City and the Board.⁵⁰⁹

This Code amendment, enacted as part of MP-2,⁵¹⁰ cannot salvage MP-1. Moreover, the amendment itself is legal only if it is consistent with the City Charter and the California Constitution. It is inconsistent with both.⁵¹¹

In summary, MP-1 was illegal under the Municipal Code, the City Charter, and California Constitution. Remarkably, no one at either the City or SDCERS appears even to have considered the question of MP-1's legality under the Municipal Code, City Charter, or California Constitution, much less to have come up with a plausible affirmative answer to the question. While this remarkable oversight may be relevant to the question of whether anyone acted deliberately in violation of law, it does not alter the conclusion that MP-1 was illegal.

To state that MP-1 was illegal is *not* to state that the retirement benefits granted by the City in connection with MP-1 are illegal and unenforceable. While it is undeniable that the circumstances under which the 1996 "meet and confer" was conducted carried the taint of MP-1's illegality, it cannot be said that the benefit agreements themselves were invalid.⁵¹²

⁵⁰⁹ San Diego Municipal Code § 24.0801 (amended Nov. 18, 2002).

⁵¹⁰ Minutes, San Diego City Council Meeting at 8-11 (Nov. 18, 2002). This amendment to the Municipal Code, along with the benefit package contemplated by MP-2, passed by an 8-1 vote, with Council members Scott Peters, George Stevens, Byron Wear, Toni Atkins, Brian Maienschein, James Madaffer, Ralph Inzunza, and Mayor Murphy voting to approve it and Councilmember Donna Frye opposed. Minutes, San Diego City Council Meeting at 9-11 (Nov. 18, 2002). Nevertheless, Councilmember Frye, along with the rest of the City Council, voted to approve the contribution scheme under MP-2. Minutes, San Diego City Council at 39-40 (Nov. 18, 2002) (Council members Scott Peters, George Stevens, Toni Atkins, Byron Wear, Brian Maienschein, Donna Frye, James Madaffer, Ralph Inzunza, and Mayor Murphy voted to approve; none opposed).

⁵¹¹ The Reish Luftman Report concluded summarily that MP-1 violated the Municipal Code. Reish Luftman Reicher & Cohen, Legal Analysis of Investigative Report on the San Diego City Employees' Retirement System at 71 (Jan. 20, 2006). The City Attorney's Interim Report No. 3 concluded that MP-1 violated former Municipal Code § 24.0801. Interim Report No. 3 also found that the November 18, 2002 amendment to this Municipal Code section was beyond the City's power since it conflicted with the Charter. City Attorney Michael J. Aguirre, Interim Report No. 3 Regarding Violations of State and Local Laws as Related to the SDCERS Pension Fund at 20 (Apr. 9, 2005). Vinson & Elkins mentioned this issue, but did not reach any conclusion. Paul S. Maco & Richard C. Sauer, Vinson & Elkins LLP., Potential Violations of the Federal Securities Laws by the City of San Diego and Associated Individuals at 28 (Draft July 15, 2005).

⁵¹² Several of the legal bases City Attorney Aguirre puts forth for voiding the benefit enhancements—both in his Interim Reports and in the pending legal action between the City and SDCERS—presume that the illegality of MP-1 and MP-2 applies to all the separate components of the proposals. In several of his Interim Reports, Mr. Aguirre cites to *Domar Elec. v. City of Los Angeles* for the proposition that MP-1 and MP-2, in totality, are void because they violated the City Charter. *Domar Elec. v. City of Los Angeles*, 9 Cal. 4th 161, 171 (1994) ("it is well settled that a charter city may not act in conflict with its charter. Any act that is violative of or not in compliance with the charter is void."). See City Attorney Michael J. Aguirre, Interim Report No. 3 Regarding Violations of State and Local Laws as Related

In summary, we conclude the SDCERS Board violated its fiduciary duties in approving MP-1.⁵⁴³ But the SDCERS Board is not the only party that bears responsibility for MP-1. The City officials who proposed, advocated, and helped approve MP-1 in their dual capacity as SDCERS Board members, knew the sole purpose of MP-1 was to provide short-term financial relief for the City and created no benefit whatsoever for retirement system members. These City officials caused a funding scheme to be adopted which, whether they knew it or not, was in violation of the California Constitution, the City Charter, the Municipal Code, and a breach of the SDCERS Board's fiduciary duty.⁵⁴⁴

C. Manager's Proposal 2

Although much of the prior examination of San Diego's pension crisis has focused on events leading up to, and culminating in, MP-2, our discussion of MP-2 will be much briefer. We conclude the SDCERS Board, at the instigation of the City, first abandoned its obligations to retirement system members not in 2002, but in 1996. We have concluded MP-1 was illegal and a violation of the Board's fiduciary duties. MP-2 did nothing to correct these illegalities.⁵⁴⁵ Some City Council and SDCERS Board members may have believed that, under at least some possible circumstances, MP-2 would have provided increased City funding of pension obligations than was required under MP-1. As we discuss throughout this report, this belief, if anyone held it, was false. The only circumstance under which MP-2 might have benefited SDCERS, compared with what it was entitled to receive under MP-1, was if the funding ratio floor of 82.3% was *not* hit as of June 30, 2002, and this did not turn out to be the case. Even if MP-2 had provided, or was expected to provide, benefits to SDCERS, it would not have corrected fully the illegality of the MP-1 funding mechanism, and the SDCERS Board members who approved or acquiesced in the continuation of City funding at rates below the

⁵⁴³ The Reish Luftman Report concluded that "the Board did not engage in a prudent process or make an informed and reasoned decisions [sic] as required under the prudent person rule," and failed to sufficiently question the advice it received from its fiduciary counsel and actuary, thereby breaching its fiduciary duty in approving MP-1. Reish Luftman Reicher & Cohen, Legal Analysis of Investigative Report on the San Diego City Employees' Retirement System at 79-80 (Jan. 20, 2006). The City Attorney's Interim Report No. 6 similarly concluded that the SDCERS Board breached its fiduciary duty in approving MP-1, noting that "[p]ension plan fiduciaries violated their constitutional duty to prudently manage the City's pension plan," and did not ask "the right questions." City Attorney Michael J. Aguirre, Amended Interim Report No. 6 Regarding the San Diego City Employees' Retirement System Funding Scheme at 35 (July 1, 2005). Vinson & Elkins did not discuss the fiduciary duties of the SDCERS Board in voting on MP-1, stating that "[t]he legality of MP1 was not specifically addressed in the V&E Report." Paul S. Maco & Richard C. Sauer, Vinson & Elkins LLP, Potential Violations of the Federal Securities Laws by the City of San Diego and Associated Individuals at 26 (Draft July 15, 2005).

⁵⁴⁴ The City Attorney's Interim Report No. 3 found that the City Council induced the SDCERS Board to violate its fiduciary duties by enticing the Board with "special benefits." This Report cited no law regarding the liability for inducing another to breach a fiduciary duty. City Attorney Michael J. Aguirre, Interim Report No. 3 Regarding Violations of State and Local Laws as Related to the SDCERS Pension Fund at 21 (Apr. 9, 2005). Neither Navigant nor Vinson & Elkins discussed this issue.

⁵⁴⁵ The sole difference is that MP-2 did not violate the Municipal Code, which was amended to permit MP-2. Because this amendment itself violated the City Charter and California Constitution, however, this distinction is entirely immaterial.

Annual Required Contribution would have violated the California Constitution, the City Charter, and their fiduciary duties for all of the reasons discussed in detail above in connection with MP-1.

Moreover, to the extent MP-2 was in fact expected to have an impact on the City's payments to SDCERS, the expected impact was to *reduce* those payments compared with what was required under MP-1, not increase them. MP-2 removed one of the primary protections for SDCERS contained in MP-1, and to this extent it not only perpetuated a funding mechanism that was already illegal and improper, but also aggravated it. MP-2, thus, also represented a new and independent illegal act by the SDCERS Board, at the instigation of the City.

As with MP-1, MP-2 did not benefit SDCERS at all.⁵⁴⁶ By the time MP-2 was formally approved by the City Council in November 2002, the fiscal year ending June 30, 2002 was already over. Although the result was not yet "official," it was obvious to everyone that the funded ratio floor of 82.3% – the MP-1 trigger – would be breached as of the fiscal year ending on June 30, 2002. Mr. Grissom and Ms. Webster knew no later than April 2002 that the funded ratio was likely to be 80%. Since that time, nothing had happened to shrink SDCERS's liabilities or increase the City's funding, and the financial markets had continued their slide. The fact that the MP-1 trigger was in fact hit as of June 30, 2002, and that this was obvious to everyone in November 2002, made a mockery of the only argument that SDCERS received *some* benefit from MP-2, namely, increased payments from the City if the trigger was not hit. In light of the fact that the trigger had in fact been hit, MP-2 served solely to give the City relief from its obligations under MP-1, which in turn had served solely to give it relief from its obligation to make a full ARC each year. In consequence, for the reasons discussed under our analysis of MP-1, MP-2 violated the applicable provisions of the California Constitution, the San Diego City Charter, and the fiduciary duties of the SDCERS Board members who voted to approve it. Our conclusion about MP-2 is confirmed by the public disclosure in late 2005 that SDCERS's own counsel concluded, in evaluating possible responses to the *Gleason* litigation in

⁵⁴⁶

The City Attorney's Interim Reports concluded, without making apparent their basis, that MP-1 and MP-2 were both illegal and a breach of the Board's fiduciary duty. City Attorney Michael J. Aguirre, Interim Report No. 2 Regarding Possible Abuse, Illegal Acts or Fraud by City of San Diego Officials at 98-99 (Feb. 9, 2005); City Attorney Michael J. Aguirre, Interim Report No. 3 Regarding Violations of State and Local Laws as Related to the SDCERS Pension Fund at 21 (Apr. 9, 2005). The legal analysis accompanying the Navigant Report concluded that MP-2 was illegal and improper in the same manner as MP-1. Reish Luftman Reicher & Cohen, Legal Analysis of Investigative Report on the San Diego City Employees' Retirement System at 81 (Jan. 20, 2006). Vinson & Elkins found that MP-2, as with MP-1, put a majority of the Board in a position that appeared to compromise their independence by voting on their own benefits, but reached no conclusion as to whether the Board breached its fiduciary duty. Paul S. Maco & Richard C. Sauer, Vinson & Elkins LLP, Potential Violations of the Federal Securities Laws by the City of San Diego and Associated Individuals at 70 (Draft July 15, 2005).

In addition, Dean Roberts, the acting City of San Diego budget director, stated that no funds were identified in or provided out of the 2002 general fund budget to cover the liability incurred by the MP-2 benefit increases or in any subsequent budget. Declaration of Dean Roberts In Support of Defendants' and Cross-Complainants' Motion For Summary Judgment/ Adjudication, *San Diego Employees' Ret. Sys. v. Aguirre*, No. GIC 841845 (Cal. Super. Ct. Mar. 15, 2006).

early 2003, that MP-2 was a violation of the Board's fiduciary duties, violations which were instigated by the City.⁵⁴⁷

D. Violations of the Internal Revenue Code

SDCERS operates as a retirement system trust fund under Section 401(a) of the Internal Revenue Code of 1986, as amended ("IRC").⁵⁴⁸ As a plan qualified under Section 401(a), SDCERS receives a tax exemption, pursuant to IRC Section 501(a), on monies accruing within the pension trust fund.⁵⁴⁹ The City has demonstrated a history of noncompliance with the IRC in the manner in which it funds and administers healthcare benefits for employees. Between 1982 and 2005, the use of SDCERS Surplus Earnings to fund retiree healthcare benefits and the administration of the retirement healthcare program through SDCERS contravened the qualification requirements of IRC Section 401(a) and IRC Section

⁵⁴⁷ A lawsuit brought by SDCERS member William R. Newsome, III against SDCERS, the City, and unnamed defendants, alleged that the Board breached its fiduciary duties when it entered into MP-2. Complaint, *Newsome v. San Diego City Employees' Ret. Sys.*, No. GIC 856841 (Cal. Super. Ct. Nov. 14, 2005). City Attorney Michael J. Aguirre has alleged that MP-2 is illegal because its implementation violated the California Constitution, the San Diego City Charter, the San Diego Municipal Code, and the California Government Code. Mr. Aguirre, in his motion for summary judgment, requested a judicial declaration that MP-2 and the benefits granted thereunder are illegal and void. However, the Court denied Mr. Aguirre's request because it found, in part, that there is a triable issue of fact concerning the "nature, extent, terms" and effect of MP-2 and whether the benefit increases were separate agreements from MP-1. The Court also noted that SDCERS's adoption of MP-2 cannot be found to have violated the debt limit laws, as set forth in California Constitution Article XVI, section 18 and City Charter section 99, because City Charter section 99 does not apply to SDCERS. Final ruling; *San Diego City Employees' Ret. Sys. v. Aguirre*, No. GIC 814845 (Cal. Super. Ct. July 10, 2006); Defendants and Cross-Complainants San Diego City Attorney Michael J. Aguirre and the City of San Diego's Notice of Motion and Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Issues, *San Diego City Employees' Ret. Sys. v. Aguirre*, No. GIC 814845 (Cal. Super. Ct. Mar. 15, 2006); Third Amended Cross-Complaint, *San Diego City Employees' Ret. Sys. v. Aguirre*, No. GIC 814845 (Cal. Super. Ct. Sept. 30, 2005). SDCERS is seeking a judicial determination that it can continue to pay retirement benefits despite Mr. Aguirre's direction to City Auditor and Comptroller John Torrel to instruct SDCERS to cease payment of certain benefits because they are illegal. Complaint for Declaratory Relief, *San Diego City Employees' Ret. Sys. v. City of San Diego*, No. GIC 851286 (Cal. Super. Ct. July 26, 2005). In a class action lawsuit brought by David Wood, a member of SDCERS, against Robert Blum, his partner Constance Hiatt, their law firm Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP ("Hanson Bridgett"), and other unnamed defendants, Mr. Wood alleged that the SDCERS Board violated its fiduciary duties when it entered into MP-2. That lawsuit and another action brought by SDCERS against the same defendants were dismissed when the class action settlement was approved by the court on June 13, 2005. Pursuant to the settlement, SDCERS is entitled to receive from Blum's, Hiatt's, and Hanson Bridgett's professional liability insurer the policy limits, amounting to, as of April 15, 2005, approximately \$14,631,000. Class Action Complaint, *Wood v. Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, et al.*, No. GIC 830558 (Cal. Super. Ct. May 25, 2004); Judgment Approving Settlement of Class Action and Dismissing Action, *Wood v. Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, et al.*, No. GIC 830558 (Cal. Super. Ct. June 13, 2005).

⁵⁴⁸ San Diego Employees' Retirement System, Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2003 at 46 (Dec. 1, 2003).

⁵⁴⁹ 26 U.S.C. § 501(a) (West 2006).

Exhibit 13

MAQUETTE DE NEW JERSEY-CULT

WWW.XCITY.COM 1100 SYMPHONY TOWERS
619.683.3003 750 B STREET
619.683.3100 FAX SAN DIEGO, CALIFORNIA 92101

S E L T Z E R C A P L A N M G M A N D R V I T E K

A LAW CORPORATION

MICHAEL A. LEONE, ESQ.

iron@ironv.com
615.685.3071
615.705.6133 FAX

May 13, 2004

Lawrence Grissom
Retirement Administrator
San Diego City Employees' Retirement System
401 B Street, Suite 400
San Diego, California 92101

RE: James F. Gleason, etc. v. San Diego City Employees' Retirement
San Diego Superior Court Consolidated Case No. GIC 803779
Our File No. 7835.56570

Dear Mr. Grissom:

This law firm represents San Diego City Employees' Retirement System ("SDCERS") in three consolidated actions currently pending before Judge Patricia Y. Cowett, of the Superior Court of the State of California, County of San Diego, under the lead caption, *James F. Gleason, et al., Plaintiffs v. San Diego City Employees' Retirement System, et al., Defendants*, San Diego Superior Court Case No. GIC803779 ("the Gleason litigation"). Pursuant to a vote of SDCERS' Board of Trustees (the "Board") on March 11, 2004, SDCERS' conditionally agreed to settle the *Gleason* litigation according to terms stated in the February 19, 2004, document entitled "Settlement Terms In Concept That City Manager Will Recommend To City Council For Approval And Which SDCERS' Counsel And Litigation Representative Will Recommend To The SDCERS Board For Approval And Which Are Agreeable To Plaintiffs And Their Counsel" ("the Term Sheet"). On March 9, 2004, the City Council voted to approve settlement of the *Gleason* litigation pursuant to the provisions of the "Term Sheet."

Paragraph 8 of the Term Sheet states, in pertinent part: "SDCERS' approval is subject to review and approval by independent fiduciary counsel." SDCERS has selected Jan Webster, Esq., and Dan Riesenber, Esq., of Pillsbury Winthrop, LLP, to serve as the independent fiduciary counsel required by the Term Sheet ("Fiduciary Counsel"). As part of its analysis, Fiduciary Counsel has requested that this firm, in its capacity as litigation counsel in the *Gleason* litigation, provide an analysis of the risks and benefits of litigating this action to a final enforceable judgment, rather than resolving it through settlement. This letter is presented to you on behalf of the Board in satisfaction of that requirement.

SDC076809

Lawrence Grissom
Retirement Administrator
Our File No. 7835.56570
May 13, 2004
Page 28

magnitude of the financial benefits imparted through such a transaction, we consider the absence of controlling authority on the specific issue presented to be insufficient grounds for concluding a court would refrain from invalidating the contested decision under one of the statutory exceptions to section 1090's financial interest prohibition.

We conclude it is probable the Court would void Manager's Proposal II on the grounds it was adopted²⁸ in violation of section 1090. However, the Court's order probably could not be extended to Manager's Proposal I (whose adoption similarly violated section 1090) because Plaintiffs' claim is likely barred by the statute of limitations. (See *Marin Healthcare Dist. v. Sutter Health* (2002) 103 Cal.App.4th 851.) The effect of this potentially anomalous result is discussed in subsequent sections.

F. Summary of Negotiations Culminating in Proposed Settlement.

Settlement negotiations were originally conducted exclusively between counsel for Plaintiffs and the City, beginning in approximately October 2003. Upon discovering settlement negotiations had commenced, we inquired of both counsel as to why we had not been invited to participate from the inception of negotiations. Each of the other parties' respective counsel claimed it was his counterpart's idea not to initially include SDCERS.

Our concern from the outset of the litigation was that Plaintiffs and the City would negotiate a deal which would have the effect of "settling around" SDCERS, such that the City gained the benefit of ending the litigation, and Plaintiffs gained the benefit of a substantial attorney's fee award, while SDCERS – the entity to which any monetary recovery would properly flow – would realize no benefit whatsoever from a lawsuit purportedly filed to "fix" the retirement contribution problem. However, when it became clear that any settlement the parties might possibly agree to would involve resetting the amortization period upon which the City's employer contribution is calculated – an action within the Board's exclusive jurisdiction – we were confident SDCERS' interests would be taken into account in any settlement the parties ultimately reached.

²⁸ Although beyond the scope of this letter, it should be noted that it would have been at least technically possible for the Board to vote on Manager's Proposal II without violating section 1090, if appropriate disclosures and abstention procedures were followed. (§ 1091.5 (a)(9), (13); see also *In re Mack* (1986) 69 Ops.Cal.Atty.Gen. 102.)

Exhibit 14

Item 4A1 October 17, 1997

Request for waiver of interest on PSC (purchase of service credit) by Judie Italiano

Grissom: Next item, Item 4A1, request for waiver of interest on purchase of service credit, purchase of service by Judie Italiano. Mr. Chairman if you could give us a—

Grissom: We have a little mislabel on the tab it appears we have 3A1 rather than 4A1. What you have in your packet under that tab is a memo to the board and the committee from Judie Italiano who is the president of MEA and the staff memo covering it. This summary situation is that the City recognizes four employee organizations. Two of those employee organizations elect or appoint or whatever from within their ranks a person to be president of that organization. That person goes on and approves leave of absences for the City for the term of their office. Those two organizations are the POA, for the Police department and the MEA for union members. Procedure was worked out in 1989 between then staff and the board, City Attorney, City Manager blah, blah, blah to provide a means for these presidents to continue on as contributing members of the retirement system, in fact what has existed now for the presidents of the POA, is that because the POA pays their salary and they have contract on the basis of the amount of that salary, the POA actually pays into the retirement system the contributions that are appropriate—both the employee and employer's side of the contribution for that position, that that way when that person's term ends and they go back into City service they have approved during City time. Apparently Ms. Italiano requested a similar treatment at some point in time and was told that unfortunately she couldn't do that. At another point and time, a period of time went by and I don't really know exactly what went on but about a year ago Judie and I began to talk about it and so on and at her request we calculated what the cost would be to restore the service credit that she has had while union president of MEA. We could put her on the same footing as the POA president, the calculation is on one of the documents in your file. What is before you is a request from Judie to ask the board to waive the interest on that portion of her purchase representing the purchase of the leave without pay she has a couple of three other things in the purchase but the leave without pay is the period of time that she has been the president of POA. The total is nineteen thousand-eight hundred dollars, is that correct? And so on. What I have indicated to you then at the end of the memo is that the board has under the muni code very broad authority to establish the cost and procedures and what have you as to (inaudible) purchase of service and that is broad enough to give you the authority to waive, and then distribute should you so desire. You have done with interest waivers at times in the past on an equity basis and in fact some of the purchase of service stuff recommended across the board waiver in interest to the City Council here three or four years ago which the council approved.

Unknown: Mr. Grissom, if I could just on the page on the letter to Judie Italiano from yourself it has one, two, three, four, five categories in periods of time for

Item 4A1 October 17, 1997

Request for waiver of interest on PSC (purchase of service credit) by Judie Italiano

which there is principal interest and it has a total. The interest being waive is only the last two, the last two—

Lawrence

Grissom: Eighty-five, fifty-five, and the eleven-two fifty-four.

Unknown: So that is where the nineteen thousand comes in as opposed to the twenty-six point one-fifty-eight and three point—

Grissom: That is correct.

Unknown: It is the pleasure of the Committee

Unknown W: I don't know what the case in the past has been but—

Unknown: Damage Control.

Unknown W: Oh yeah. I don't know what the cases have been in the past but it seems to me like some of the members have to pay for their benefit and you either pay as you go or you purchase it later and the rules to purchase it later you pay it with interest because the system hasn't had the money or the interest this individual has, but that is the cost of buying the benefit and I am not comfortable with giving someone an exception. Besides other issues I don't know whether she's had it or any of that but I don't see anything here that will compel me to give a member special treatment, in fact I think it would be inequitable to do that so I am not comfortable in believing that falls in procedure and quote, unquote shorting the system money due for future benefits.

Unknown: John.

John: Thank you (Inaudible). In this case I think it might be a little different in that the member was denied to actually pay into the system all that time by no fault of her own. It was her understanding of asking everyone involved, was that she was not allowed to when; in fact she was, so that interest accumulated naturally but it was of no fault of the member in this case, that is why I would disagree with you Terry about whether or not it is right or wrong to waive the interest at this point. If this would have been handled properly there would have been no interest accumulated and (inaudible) that is a real burden on that member when it was in fact no fault of their own that this happened this way, that it turned out this way.

Unknown: Keith.

Keith: In this case I think that Judie has been dealt with differently than the presidential candidate or whatever you want to call it of the other labor

Item 4A1 October 17, 1997

Request for waiver of interest on PSC (purchase of service credit) by Judie Italiano

organizations. (Inaudible) actually going to pay into the system and I don't have the problem wavering and have it done right and pay that off. (Inaudible) making a motion to review this.

Unknown: Mr. (inaudible) is that a motion?

Unknown: No, I will make that the following motion.

Unknown: Is there a second for further discussion? Ok. And I would like to also—if you can Sally, as you notice up on the board here we have both the agenda item and the motion. What the intent is to be able to put the actual motion on the screen so that everybody present is clear exactly what it is you will be voting upon and what action this board has taken and conclusion. So I will make sure she has the opportunity to, she has the opportunity.

Unknown: Cast your votes.

Sally: All votes are in.

Unknown: Thank you and Sally are you going to put up that up, the actual motion.

Unknown: It was, It was up. When you switch from one screen to the other you loose—

Unknown: It was up.

Unknown: It appeared—ok.

Sally: The motion was approved.

Unknown: That is fine, not a problem.

Exhibit 15

SDCERS' RETIREMENT BOARD MINUTES
FRIDAY, OCTOBER 17, 1997

The Retirement Board of Administration held its regularly scheduled meeting in the System's Board Room. Location: 401 "B" Street, Suite 400, San Diego, CA 92101. The meeting was called to order at 1:35 p.m. by Keith Enerson.

IN ATTENDANCE:

Trustees: Keith Enerson, Chair; Ron Saathoff, Jack Katz, John Casey, Paul Barnett, Terri Webster, Robert Scannell, John Torres, Diann Shipione

Staff: Lawrence Grissom, Lori Chapin, Christine Folsom, Roxanne Parks, Sally Zumalt, Cynthia Hilliard, Jan Beaton, Peggy Martinez, Doug McCalla, Patrick Lane, Mercedes Barcelona, Shirley Cunningham, Vincent Hayes

Public: Cathy Lexin, Carol Carr, Matthew MacCawley, Charles Alesi, Harold Mullins, Rebecca Ching, Willie Jones, Peter Kopf, Carol Labonte, James Cunningham, Perry Thompson, Scott O'Mara, Gail Beirman, David Dugan, Lori Cage, Butch Hubble, Judie Italiano

Excused: Sharon Wilkinson, Conny Jamison, Bruce Herring, Frederick Pierce

I. APPROVAL OF CONSENT AGENDA ITEMS #A - G

MOTION TO APPROVE CONSENT AGENDA ITEMS A-G: J. TORRES

SECOND: J. KATZ

DISCUSSION:

Mr. Saathoff questioned whether the Auditor and Comptroller's report was distributed.

Mr. Grissom responded a series of mechanical problems had occurred which interfered with the System's Investment Accountant being able to perform her job. These problems included changing from trade date accounting to settlement date accounting and the custodial bank not posting transactions in a timely fashion. He stated he hopes these problems will subside once the custodial bank RFP has been completed.

**MOTION AMENDED TO APPROVE CONSENT AGENDA ITEMS #IA, B,C, E, F
AND G: J. TORRES**

SECOND: J. KATZ

BOARD: UNANIMOUS

MOTION TO APPROVE PASSED.

SERVICE RETIREMENTS

1. Elinora S. Brown, Customer Service Representative, Water Department. Age 67.25. 18.00 years creditable service. Effective date 10/19/97. Estimated monthly allowance \$1,110.33 plus \$55.24 COLA, maximum benefit. (Additional funds from Surviving Spouse)
2. Donald Hillman, Jr., Assistant Port District Director, UPD. Age 64.50. 31.00 years creditable service. Effective date 10/4/97. Estimated monthly allowance \$8,847.61 plus \$166.67 COLA, maximum benefit with surviving spouse provisions. (ERIP)

SDCERS' RETIREMENT BOARD MINUTES
FRIDAY, OCTOBER 17, 1997

4. ELECTION OF OFFICER (VICE-PRESIDENT)
5. COMMITTEE APPOINTMENTS

Mr. Enerson requested Items #4 -5 be continued to the November meeting so a full Board could be present to vote.

MOTION TO CONTINUE ITEMS #4-5 UNTIL NOVEMBER, 1997:

SECOND:

J. KATZ

BOARD:

J. TORRES

UNANIMOUS

MOTION TO CONTINUE ITEMS #4-5 FOR 30-DAYS PASSED.

VII. BUSINESS AND PROCEDURES COMMITTEE REPORT - RON SAATHOFF

1. INFORMATIONAL

A. STATUS REPORTS - NO ACTION REQUESTED

1. PROPOSAL REGARDING OVERPAYMENT OF SURVIVING SPOUSE BENEFITS - JANET HOLLADAY

Mr. Saathoff indicated a certified letter was sent to Ms. Holladay with her options in regards to paying back her overpayment. Staff has not yet received a response. This item will come back in November.

2. OLD BUSINESS

A. APPROVAL RECOMMENDED

1. REQUEST FROM THE CITY MANAGER'S OFFICE RE: CHANGES IN THE DISABILITY PROCESS

Mr. Saathoff stated Staff is working on a draft document which will be available at the November meeting. No action necessary.

**SDCERS' RETIREMENT BOARD MINUTES
FRIDAY, OCTOBER 17, 1997
PAGE 12**

3. NEW BUSINESS

A. APPROVAL RECOMMENDED

1. REQUEST FOR WAIVER OF INTEREST ON PSC (PURCHASE OF SERVICE CREDIT) BY JUDIE ITALIANO

Mr. Grissom provided background information on this request. He stated that as a result of miscommunications from the Manager's office to Ms. Italiano

regarding her leave-without-pay status while filling the Presidency of MEA, this request comes forth at no fault of Ms. Italiano.

Mr. Saathoff stated the Committee had considered this item and recommends approval of a waiver of interest of \$19,809.50 because Ms. Italiano had been treated differently than presidents of the other labor organizations. Additionally, he said the City Manager's office supports this request.

**MOTION TO APPROVE MS. ITALIANO'S REQUEST TO WAIVE
INTEREST OF \$19,809.50 ON HER PURCHASE OF SERVICE:**

SECOND:
BOARD:
MOTION TO APPROVE PASSED.

**R. SAATHOFF
J. CASEY
UNANIMOUS**

4. TRAINING

A. ACTION REQUESTED

1. DIANN SHIPIONE, JOHN TORRES AND FRED PIERCE'S
ATTENDANCE AT CALAPRS BASIC PRINCIPLES OF PENSION
MANAGEMENT AT STANFORD UNIVERSITY FEBRUARY 11-13, 1998

Mr. Saathoff stated attendance at this training is limited. Therefore, it is the recommendation of the Committee that Ms. Shipione be designated 1st alternate, Mr. Pierce 2nd alternate and Mr. Torres 3rd alternate.

MOTION TO APPROVE THE COMMITTEE'S RECOMMENDATION:

SECOND:
BOARD:
MOTION TO APPROVE PASSED.

**R. SAATHOFF
J. CASEY
UNANIMOUS**

VIII.INVESTMENT COMMITTEE REPORT - ROBERT SCANNELL

**SDCERS' RETIREMENT BOARD MINUTES
FRIDAY, OCTOBER 17, 1997
PAGE 13**

1. REPORTS

A. STATUS REPORT - NO ACTION REQUESTED

1. MANAGER'S WATCH LIST
2. SDCERS' ASSET ALLOCATION
3. IPC'S QUARTERLY REPORT AS OF JUNE 30, 1997

Exhibit 16

January 8, 2001

Daniel E. Kelly
Labor Relations Manager
202 C Street
San Diego, CA 92101

Dear Dan:

In an effort to resolve the issues of Presidential Leave for the President of Local 145 we offer the following proposal:

1. Union President works 20% of his/her schedule performing usual range of duties for his/her job classification.
2. The City will compensate the union president for hours worked during scheduled working hours in performance of union duties pursuant to state Government Secs. 3500 ~~et seq.~~ Such hours will not exceed 40% of the scheduled work week.
3. For the remaining 40% Local 145 shall have the responsibility of compensating the president directly. The City through its Management Team will support any necessary changes to the Civil Service Rules and the Rules of the Retirement System to authorize the above described arrangement, including a provision permitting union presidents to remain full-time contributing active members of the City Employees Retirement System even when working less than half-time for the City-on the condition that the union bears the cost of the benefit covering presidential leave time either through reimbursement to the City or by direct payment.

It is our intent to pay retirement directly for presidential leave time consistent with the current procedure followed by the P.O.A. and the M.E.A. Flexible benefits and annual leave would accrue consistent with city policy.

Sincerely,

RONALD L. SAATHOFF
President

Chief Asby

*1. Retirement Bd - full time City??
2. MCA / POA compensate @ whatever rate they're being compensated PO II + payment for net*

Exhibit 17

From: Theresa McAteer
To: Cathy Lexin; Dan Kelley; Ed Ryan; Eugene Ruzzini; Terri Webster
Date: 1/19/01 5:07PM
Subject: Re: union leave

Small # - Issue is Council sets benefits not sta pf.
Larry can quantify if desired.

Can we articulate how this affects the City, its contributions, its risk, etc. Such information will be helpful to me in conducting a thorough evaluation of this issue. Terri, let's talk early next week to discuss further.

Theresa

>>> Terri Webster 01/19 3:35 PM >>>

Larry advised that it has been past practice (at least for 6-7 years), for MEA and POA ...not documented anywhere or authorized by the City Council....
to have the Unions pay the City the employers and employees contributions based on their UNION salary. Therefore in Judy's case she will most likely retire at 55 (next year?), and her benefit will be based on her union salary \$90,000 (?) without even coming back to the City at her \$40,000 CAII (?) salary. So her retirement will be based on a one year high of another employer. For Ron Newman and Gary Eastus they came back and their City salary exceeded their union salary by the time they retired. This is the gist of it...Larry is going to document exactly what was done for whom and what the expectations are of each partywhich will give the details on buy backs etc. for each individual. He has to go back to Oregon on his Dad's estate next week but expects to have this done in the next couple weeks.
Terri

π 24.0201

2NDFL003862

PENSION_U0000035

Exhibit 18

From: Dan Kelley
To: Ed Ryan; Eugene Ruzzini; Terri Webster; Theresa McAteer
Date: 2/14/01 8:26AM
Subject: Presidential Leave

*What have they done
for last 18 mos*

As a follow-up to our last meeting on Presidential Leave, I met with Larry Grissom and discussed the issue of Presidential Leave and retirement for Union Presidents.

Currently, MEA is paying retirement contributions for both the employer and employee for Judie Italiano based on a salary of \$90,937. That salary figure was provided to Retirement by MEA effective July 8, 2000.

*who paid
that was OK*

Currently, POA is paying retirement contributions for both the employer and employee for Bill Farrar based on a salary of \$74,011. That salary figure was provided to Retirement by the POA effective May, 2000.

The salary figures for the presidents have been adjusted from time to time by request of the respective unions. Retirement contributions are then adjusted accordingly.

Larry indicated that the files on past presidents for POA are rather voluminous and available if there is an interest in "auditing" retirement contributions made on their behalf when serving as the POA president. However, it is my understanding that the "high one year" for each of these past presidents has been exceeded as active city employees.

I will schedule another meeting with you in an effort to close out the issue of the Union Activity Audit.

Dan

CC: Cathy Lexin; Lawrence Grissom; Maggie Taylor; Marian Thompson

Exhibit 19

From: Dan Kelley
To: Ed Ryan; Eugene Ruzzini; Terri Webster; Theresa McAteer
Date: 4/6/01 2:38PM
Subject: Presidential Leave Retirement Credit

Attached is the revised language we discussed in our meeting this morning regarding the Presidential Leave Retirement Credit.

As a result of today's meeting:

- 1) Gene is reviewing the Audit response.
- 2) Upon tentative approval of the Audit response from the Gene, I will discuss the response with Chief Osby.
- 3) The City Attorney's Office is proceeding with the review of the draft Memorandum of Law.
- 4) We are planning on briefing Council on the Presidential Retirement Credit issue on April 17 (assuming we get in and that the Council has sufficient time to address the issue).
- 5) We are seeking costing data on the Presidential Leave Retirement Credit from SDCERS to provide to Council on the impact of creating this additional retirement benefit.
- 6) No contact will be made with the unions until the Audit response is completed.

Any feedback is welcome.

Thanks

Dan

CC: Cathy Lexin; Sharon Marshall

April 17
① recommendation?
Pres leave
② PY01
Robert Hall
agreed
③ OK
Winn

Tomah
Judie \$

Presidential Leave - Payment for Retirement Benefits
(Revised Language)
April 6, 2001

- (A) A union president may have his/her retirement benefits calculated based on the high one year salary paid by the union instead of the City during presidential leave. The employer and employee contribution during the term of the employee's presidential leave shall be paid by the union/employee.
- (B) If the employee's union salary is greater than the employee's City salary, for purposes of determining the high one year salary upon which retirement will be based, then the union/employee shall pay the total difference between: (i) the cost of the retirement benefit based on the employee's City salary for the last City job classification held by the employee; and, (ii) the cost of the employee's benefit based on the union salary. This payment shall be determined by the SDCERS actuary, and shall include all costs including past service costs.
- (C) The union will not unreasonably increase the union president's salary so as to "spike" the high one year for the employee. Further, if a union president enters the Deferred Option Retirement Plan (DROP), the union must continue to pay their (the employer's and the employee's) proportionate share of the costs, including past service costs.

Presidential Leave - Payment for Retirement Benefits
(Revised Language)
April 6, 2001

- (D) If a union president wishes to purchase service credit, the cost of such purchase shall be based on the union president's union salary or City salary, whichever is higher.

Exhibit 20

Office of
The City Attorney
City of San Diego
MEMORANDUM

236-6220

DATE: April 12, 2001

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Closed Session Agenda Items for April 17, 2001

Please place the following matters on the City Council Closed Session docket for Tuesday, April 17, 2001, at 9:00 a.m.

I. Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(a):

- a. *Lee, et al. v. City, et al.*
U.S. District 98 cv 1292 BTM (LSP)
- b. *Southern California Underground, Inc. v. City,*
S.D. Superior GIC 750233 and GIC 754273; and
J.G. Pipeline, Inc. v. City,
S.D. Superior GIC 759058
- c. Expert Witness/Consultant Fees
APC-T&K v. City
S.D. Superior GIC 741059
Schulster Tunnels/PRECON v. Traylor Brothers/Obayashi et al.
S.D. Superior 722543
Nielsen Dillingham Builders v. City
S.D. Superior GIC 741898 & 719731
Herzog Contracting v. City
S.D. Superior GIC 746091.

II. Conference with Real Property Negotiator, pursuant to California Government Code section 54956.8:

Property: City-wide Franchise Agreement

Agency Negotiator: George I. Loveland, Senior Deputy City Manager; Patricia Frazier, Deputy City Manager; Deborah Berger, Deputy City Attorney

Charles G. Abdelnour

April 12, 2001

Page 2

Negotiating Parties: San Diego Gas & Electric

Under Negotiation: Price and terms.

III. Conference with Labor Negotiator, pursuant to Government Code section 54957.6:

Agency negotiators: Michael Uberuaga, Bruce Herring,
Dan Kelley, Stanley Griffith, Mike McGhee

Employee organizations: Municipal Employees Association, Local 127
AFSME, AFL-CIO, Local 145 International
Association of Firefighters AFL-CIO, San Diego
Police Officers Association.

CASEY GWINN, City Attorney

By 
Leslie E. Devaney
Executive Assistant City Attorney

LED:js

Exhibit 21

CLOSED SESSION REPORT [X] CITY OF SAN DIEGO [] OTHER (See below)

NOT A PUBLIC RECORD

until the information in this box is completed,
signed by an authorized representative of the
City Attorney's Office and stamped in the space below

TITLE Labor Negotiations - Meet and Confer
Health Insurance (HDCA Mc Ateer)

DATE OF CLOSED SESSION: 4/17, 2001

☐ REAL PROPERTY NEGOTIATIONS G.C. § 54956.8

☐ Ongoing/Status Report

☐ Final Approval of Agreement (D)

Substance of Agreement: _____

☐ Final approval dependent on other party

Date Litigation Concluded: _____, 2001

By: _____

Title: _____

(STAMP HERE)

☐ LITIGATION G.C. § 54956.9

☐ (a) Pending ☐ (b)(1) Significant Exposure ☐ (b)(2) Authorizing Session ☐ (c) Initiating

☐ Defend Litigation (D)

☐ Status Report

☐ Seek Appellate Review (D)

☐ Refrain from Seeking Appellate Review (D)

☐ Amicus Participation

☐ Other (see below)

☐ Settlement Offer To Be Conveyed

☐ Acceptance of Signed Settlement Offer (D)

☐ Initiate Litigation or Intervene (D)

☐ Contingent Acceptance of Signed Offer

☐ Non-Disclosure of Litigation Recommended (check if yes): ☐ See Report

☐ Interfere with service of process ☐ Impair ability to settle

☐ CLAIMS DISPOSITION G.C. § 54956.95

☐ Offer Made

☐ Offer Accepted

☐ See Report

☐ DECISION ON EMPLOYMENT STATUS G.C. § 54957

☐ Appoint (D)

☐ Employ (D)

☐ Accept Resignation (D)

☐ Discipline (D)

☐ Dismissal or Nonrenewal (disclose after exhaustion of administrative remedies)

Title: _____

Change in Compensation: _____

☐ LABOR NEGOTIATIONS G.C. § 54957.6

☐ Ongoing/Status Report

☐ Final Approval of Agreement (D) Other Party to Negotiation: _____

Item Approved: _____

ATTENDEES: ☐ City Mgr ☐ Asst City Mgr ☐ Dep City Mgr (Herring)

☐ City Atty ☐ Exec Asst City Atty ☐ Asst City Atty (Girard)

☐ City Auditor

☐ Other _____

☐ VOTE

☐ NO VOTE NECESSARY

COMMENTS: Off Calendar

Name	Yea	No	Absent
District 1			
District 2			
District 3			
District 4			
District 5			
District 6			
District 7			
District 8			
Mayor			

Voting Tally

APPROVED: _____

NOTE: (D) DISCLOSE FOLLOWING CLOSED SESSION

Exhibit 22

From: Dan Kelley
To: Cathy Lexin
Date: 8/28/01 12:41PM
Subject: Re: Presidential Leave

>>> Cathy Lexin 8/28/01 10:07:35 AM >>>

I am going to re-write this. I do need some facts to include...can you e-mail me:

1. what is the current salary for POA Pres on which contributions are being paid into CERS, as of whatever date it became effective **As of 5/12/2000 \$74,011 (checking to see if it has been increased since)**
 2. Same for MEA **As of 7/18/2000 \$90,937 (checking to see if it has been increased since)**
 3. when did Judie begin making these contributions (I received salary data on Judie's union salary from '97 forward , checking to see when it actually began)
 4. when did Bill F May 2000, but prior to him, Garry Collins and Harry Eastus had contributions made on their behalf
 3. what would Judie's salary be as a Payroll specialist II today **\$32,678**
 4. same for Bill based on POII at step 5 **\$62,069 (incl. 5% Adv Post)**
- At our last meeting on this I had suggested a chart laying out this data
In your last draft, you had some numbers for each of the 3 Pres's, and I would like to see the data/analysis or can you refer me to whomever collected the data, did the analysis that led to these costs? I need someone to explain the numbers?

Per Larry Grissom who gave me the numbers over the phone in Feb 2001 for Bill and Judie and in April 2001 for Ron, if the Municipal Code were amended providing for the authorization of the high one year union salary for computation of retirement benefits, it would create an unfunded liability to the CERS for the incumbent presidents as follows:

MEA (Julie Italiano)	\$144,871
POA (Bill Farrar)	\$ 55,847
Local 145 (Ron Saathoff)	\$ 99,726

Exhibit 23

**ATTORNEY TO CLIENT CORRESPONDENCE
FOR CONFIDENTIAL USE ONLY**

**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: August 30, 2001

TO: Honorable Mayor and City Council

FROM: Cathy Lexin, Human Resources Director

SUBJECT: Leave of Absence Without Pay for Union Officials
and Retirement Benefit Authorization

BACKGROUND

The Memorandum of Understanding (MOU) for each of the City's four unions, Municipal Employees Association (MEA), Police Officers Association (POA), Fire Fighters, Local 145 (Local 145) and American Federation of State, County and Municipal Employees, Local 127, (Local 127) provide enabling authority for one or two union officials to take an unpaid leave of absence from City employment and work full-time for the union (attachments 1 through 4) each with slightly differing provisions.

The Municipal Code governing retirement benefits permits any City employee who returns from an approved Leave of Absence Without Pay to "purchase" the leave time when no contributions were being made, and thus no service credit earned. Specifically, for the first year of approved leave, the employee would have to pay to the San Diego City Employees Retirement System (SDCERS) the employee contributions, plus interest. For leaves beyond one (1) year, the employee would be required to pay both the employer and employee contributions plus interest.

To date, only POA and MEA Presidents/Officers have exercised the Leave Without Pay option. A recent request by the President of Local 145, combined with a payroll audit, have brought the following information to light, prompting this proposed request.

POA

The POA MOU provides that the City will support a Leave of Absence Without Pay for up to two (2) POA members at the same time. The current as well as past Presidents of the POA have taken an unpaid leave of absence from the Police Department while serving as the President of the POA Board of Directors, and have been paid a salary established by the POA. Upon returning to active duty, the past-presidents have exercised their right under the Municipal Code to purchase the leave time based upon the salary of the Police Department position from which they took leave (e.g., Police Sergeant, Police Captain, etc.)

In 1989, the incoming POA President requested and was administratively authorized to pay retirement contributions on a pay-period-by-pay-period basis while on "presidential leave" to avoid the future lump sum payment obligation. When these contributions began, they were calculated based upon the POA-paid salary as President, rather than the Police Department salary of a Police Officer/Detective. We have not been able to locate any documentation explaining why the POA salary was used as the basis for calculating contributions. It is not clear whether this was an intentional change, or an unintentional occurrence. Nonetheless, this practice began in 1989 and has continued administratively with three (3) subsequent POA Presidents, virtually obscure to current City management until recently.

MEA

The current MEA President has held this office since 1986 and has been on an approved Leave of Absence Without Pay from the City for this entire period. During labor negotiations in 1997, a number of retirement benefit enhancements were implemented. As part of these changes, a specific provision was added to the Municipal Code 24.0201(c), attached, authorizing the duly elected president of a recognized labor organization to continue making retirement contributions to SDCERS while on "Presidential Leave." In 1997, the President of MEA exercised this feature, purchased service from 1986 through 1997, and began making prospective retirement contributions. What was not apparent to City management was that these contributions, like the POA President, were calculated based upon the MEA-paid salary for their President.

Local 145

The President of Local 145 has made a request for "Presidential Leave" in a manner slightly modified from that described in Article 47 of the MOU (attached). The MOU provides that the President may work 20% on Fire Department business, 40% on Union business which qualifies as City-paid release time, and the remaining 40% on other Union business (non-release time qualifying activity) for which the Local would compensate or reimburse the City. The provisions of this Article have never been activated pending satisfactory resolution of legal and tax-related concerns by the City. As an alternative, the President has now proposed a simpler version, in essence being "on the clock" for 60% of his time (20% Fire Department business and 40% qualifying Union-release time activities) with the remaining 40% treated as Presidential Leave. As such the Local would pay, on behalf of the employee, 40% of SDCERS retirement contributions. As to other City benefits, such as annual leave earned, flexible benefit contributions, etc., the employee/President would be treated as any other part time (60%) employee.

Retirement Benefit

The retirement benefit formula for City employees is established by the City Council in the Municipal Code, and includes as a factor, the employee's highest one year salary. It has become apparent that the past practice for twelve (12) years with POA, and four (4) years with MEA of accepting contributions based upon the Union salary, has created an expectation that the Union President's/employee's retirement benefit will be based upon their Union salary, should that be their highest one year salary.

August 30, 2001

DISCUSSION

The Meyers-Miliias-Brown Act, Government Code Sections 3500-3511 (MMBA), governs employer-employee relations in the State of California, and establishes the public purpose and value of establishing full communications between public agencies and their employees. MMBA as well as local MOU provisions, dictate that the City must grant "a reasonable number of employees" with "reasonable time off" without loss of compensation or benefits in order to meet with the City's management representatives or to prepare for representation of employees. In light of this obligation, there is a financial benefit to the City when Union Presidents take a Leave Without Pay from the City while performing Union responsibilities, given the City's obligation to compensate much of this time. The benefit to the Union President/employee is freedom from reporting their activities and coordinating their City employment work schedules with their activities as Union President, some of which would be outside the obligation of the City to compensate.

RECOMMENDATION

It is recommended that the City Council amend the Municipal Code to allow a duly elected President of a recognized labor organization who is granted a Leave Without Pay, whether full time or in the part-time manner proposed by Local 145, the option of (1) continuing contributions to SDCERS based upon their salary at the time of Leave, or (2) making contributions based upon the Union-paid salary as President, or (3) making contributions based upon the combination of employee salary and Union-paid salary as in the case of Local 145. It is further recommended that the City Council set a salary cap for purposes of retirement contributions and potentially benefit calculations, for any Union President electing this provision, and that the salary cap be the equivalent of Assistant Department Directors and the City's Labor Relations Manager (currently \$102,000/year). This would ensure comparable treatment among the labor organizations, and eliminate the appearance that a Union could control the retirement benefit of an individual employee. This recommendation is only intended to apply to the President of each labor organization, and not to any additional union officers who may request Leave Without Pay. If approved, this matter would be discussed with the four labor organizations, then an amendment to the Municipal Code would be prepared for adoption by the City Council.

ALTERNATIVE

- * 1. Notify MEA and POA Presidents that they have been contributing an inappropriate retirement contribution, refund the overpayments, and advise the employee/Presidents that the City will not consider the Union-established salary in determining high one year for retirement benefit calculations. It is relatively certain that this would generate litigation.
- 2. For Local 145's President,

Cathy Lexin

Human Resources Director

Attachments

Exhibit 24

DRAFT

DATE: November 26, 2001

TO: Honorable Mayor and City Council

FROM: Cathy T. Lexin, Human Resources Director
, Deputy City Attorney

SUBJECT: Leave of Absence Without Pay for Union Officials and Retirement Benefit Authorization

The Memorandum of Understanding (MOU) for each of the City's four unions, Municipal Employees Association (MEA), Police Officers Association (POA), Fire Fighter, Local 145 (Local 145) and American Federation of State, County and Municipal Employees, Local 127, AFL-CIO, (Local 127) provide enabling authority for one or two union officials to take unpaid leave of absence from City employment and work full-time for the union (attachments 1 through 4) each with slightly differing provisions

The Municipal Code governing retirement benefits permits any City employee who returns from approved leave to "purchase" the leave time from the City job they left when no contributions were being made, and thus no service credit earned. Specifically, for the first year of approved leave, the employee would have to pay the San Diego City Employee Retirement System (SDCERS) the employee contribution, plus interest. For leaves beyond one (1) year, the employee would be required to pay both the employer and employee contribution plus interest.

To date, only POA and MEA Presidents/Officers have exercised the Leave Without Pay option. A recent request by the President of Local 145, combined with a payroll audit, have brought the following information to light, prompting this request.

POA

The POA MOU provides that the City will support a Leave of Absence Without Pay for up to two (2) POA members at the same time. The current as well as past Presidents of the POA have taken an unpaid leave of absence from the Police Department while serving as the President of the POA Board of Directors, and have been paid a salary established by the POA. Upon returning to active duty, the past-presidents have exercised their right under the Municipal Code to purchase the leave time based upon the salary of the Police Department position from which they took leave (e.g., Police Sergeant, Police Captain, etc.)

In 1989, the incoming POA President requested and was administratively authorized to pay retirement contributions on a pay-period-by-pay-period basis while on "presidential leave" to avoid the future lump sum obligation. When these contributions began, they were calculated based upon the POA-paid salary as President, rather than the Police Department salary of a Police Officer/Detective. We have not been able to locate any documentation explaining why the POA salary was used as the basis for calculating contributions. It is not clear whether this was an intentional change, or an unintentional occurrence. Nonetheless, this practice began in 1989 and has continued administratively with three (3) subsequent POA Presidents virtually obscure to current City management until recently. It should be noted that, to date, there have been no unauthorized retirement payments made to any past union president since no union president has retired from any position other than a City position.

MEA

The current MEA President has held office since 1986 and has been on an approved Leave of Absence Without Pay this entire period. During labor negotiations in 1997, a number of retirement enhancements were implemented. As part of these changes, a specific provision was added to the Municipal Code 24.0201(c) (attachment 5) authorizing the duly elected presidents of recognized labor organization to continue making retirement contributions to SDCERS while on "presidential leave." In 1997, the President of MEA exercised this feature, purchased service from 1986 through 1997, and began making prospective retirement contributions at a higher rate based on the union salary. However, it was not apparent that these contributions, like the POA President, were calculated based upon the MEA-paid salary for the President.

Local 145

The President of Local 145 has made a request for "Presidential Leave" in a manner slightly modified from that described in Article 47 of the MOU (attached). The MOU provides that the President may work 20% on Fire Department business, 40% on Union business which qualifies as City-paid release time, and the remaining 40% on other Union business (non-release time qualifying activity) for which the Local would compensate or reimburse the City. The provisions of this Article have never been activated by the Local 145 President purportedly pending the satisfactory resolution of legal and tax-related concerns by the City. As an alternative, the President has now proposed a simpler version, in essence being "on the clock" for 60% of his time (20% on Fire Department business and 40% qualifying Union-release time activities) with the remaining 40% treated as Presidential Leave. As such the Local would pay, on behalf of the employee, 40% SDCERS retirement contributions. As to other City benefits, such as annual leave earned, flexible benefit contributions, etc., the employee/President would be treated as any other part time (60%) employee.

Retirement Benefit

The retirement benefit formula for City employees is established by the City Council in the Municipal Code, and includes a factor, the employee's highest one year salary. It has become apparent that the past practice for twelve (12) years with POA, and four (4) years with MEA of accepting contributions based upon the Union salary, has created an expectation that the Union President's/employee's retirement benefit will be based upon their Union salary, should that be the

highest one year salary. There are two suggested options for the implementation of the Leave of Absence Without Pay for Union Officials and Retirement Benefit Authorization.

Blended High One Year Methodology:

This method, recommended by the City Manager, provides for a "Blended high one year calculation" methodology which utilizes the applicable High One Year Salary based on the number of years of service in each of the Union President's employee positions (City employee, or Union President, or the City employee/Union President service together, as may be the case) in consideration of the retirement contribution made relative to the specific position. There is no additional cost or unfunded liability to SDCERS associated with the Blended methodology.

Combined High One Year Methodology:

This method, sought by the Union Presidents, applies a "Combined high one year calculation methodology" which utilizes the total highest one year salary attained as either the Union President, or the Combined total salary as Union President AND City employee irrespective of whether sufficient contributions have been made to the SDCERS to support such a proposed benefit calculation. The SDCERS Administrator estimates the unfunded liability for the Combined High One Year Methodology to be approximately \$300,000 for the current union presidents.

The attachments (1-3) provide a comparison of the benefit differential which occurs between the Blended High One Year Methodology and the Combined High One Year Methodology.

Discussion

The Meyers-Milias-Brown Act, Government Code Sections 3500-3511 (MMBA), governs employer-employee relations in the State of California, and establishes the public purpose and value of establishing full communications between public agencies and their employees. MMBA as well as local MOU provisions, dictate that the City must grant "a reasonable number of employees" with "reasonable time off" without loss of compensation or benefits in order to meet with the City's management representatives or to prepare for representation of employees. In light of this obligation, there is a financial benefit to the City when Union Presidents take a Leave Without Pay from the City while performing Union responsibilities, given the City's obligation to compensate much of this time. The benefit to the Union President/employee is freedom from reporting activities and coordinating their City employment work schedules with their activities as Union President, some of which would be outside the obligation of the City to compensate.

RECOMMENDATION

It is recommended that the City Council amend the Municipal Code, implementing Option I - Blended High One Year Methodology, to allow a duly elected President of a recognized labor organization who is granted a Leave Without Pay, whether full time or in the part-time manner proposed by Local 145, the option of (1) continuing contributions to SDCERS based upon their salary at the time of Leave, or (2) making contributions based upon the Union-paid salary as

President, or (3) making contributions based upon the combination of employee salary and union-paid salary as in the case of Local 145. It is further recommended that the City Council set a salary cap for purpose of retirement contributions and potentially benefit calculations, for any Union President electing this provision, and that the salary cap be the equivalent of Assistant Department Directors and the City's Labor Relations Manager (currently \$102,000). This would ensure comparable treatment among the labor organizations, and eliminate the appearance that a Union could control the retirement benefit of an individual employee. This recommendation is only intended to apply to the President of each labor organization, and not to any additional union officers who may request Leave Without Pay. If approved, this matter would be discussed with the four labor organizations in the context of the upcoming meet and confer for successor Memoranda of Understanding, then an amendment to the Municipal Code would be prepared for adoption by the City Council.

ALTERNATIVE

The alternative to this recommendation would be to notify MEA and POA Presidents that they have been contributing an inappropriate retirement contribution, and that the City would not consider the Union-established salary in determining high one year for retirement benefit calculations. It is relatively certain that this would generate litigation.

Cathy Lexin
Human Resources Director

Attachments

Presidential Leave

Judie Italiano	
Birth date	04/07/1946
Member date	04/18/1977
MEA President	08/15/1986
MEA President Member Date	09/01/1997
Current MEA salary	\$ 3,780.40 pay period
Last City Salary	\$ 429.20 pay period
Assumptions - Out of office and retire	01/01/2002
Service at Retirement	24.77 years
Age at retirement	55 + years
Service as MEA President as Member	4.428 per pay period

COMBINED METHODOLOGY

<u>Line No</u>	<u>Description</u>	<u>Amount</u>
1	Total Years of Service	24.77
2	Retirement Allowance Factor	0.0225
3	MEA Salary	\$ 98,290.40
4	Annual Combined Retirement Allowance (Line 1 X Line 2 X Line 3)	\$ 54,779.70

BLENDED METHODOLOGY

5	Union annual salary	\$ 98,290.40
6	Years of Service as President	4.428
7	Retirement Allowance Factor	0.0225
8	Annual retirement allowance based on years as union president (Line 5 X Line 6 X Line 7)	\$ 9,792.67
9	City Salary	\$ 11,159.20
10	City years of service	20.342
11	Retirement Allowance Factor	0.0225
12	Annual retirement allowance based on years as City employee (line 9 X line 10 X Line 11)	\$ 5,107.51
13		
14	Annual Blended Retirement allowance (line 8 + line 12)	\$ 14,900.18
	Difference between combined methodology and blended (line 4 - line 14)	\$ 39,879.51

The annual retirement allowance is \$39,879.51 higher using the combined retirement allowance method.

Presidential Leave

Bill Farrar	
Birth date	12/31/1946
Member date	02/18/1972
POA President	02/05/2000
Current biweekly POA salary	\$ 3,048.92
Assumption - Retire 1/1/2002	01/01/2002
Service at Retirement per Retirement	26.3 years
Age at retirement	55 + years
Salary at time of LWOP for POA President	\$ 2,205.60 per pay period
Annual City Salary	\$ 57,345.60
Annual POA Salary	\$ 79,271.92

Combined Methodology:

<u>Line No</u>	<u>Description</u>	<u>Amount</u>
1	Total years of service (City and POA)	26.3
2	Retirement Allowance Factor	0.03
3	POA Salary (use higher of POA or City salary)	\$ 79,271.92
4	Annual retirement allowance based on POA salary (Line 1 X Line 2 X Line 3)	\$ 62,545.54

Blended Methodology

5	City Years of Service	23.4
6	Retirement Allowance Factor	0.03
7	City Salary	\$ 57,345.60
8	Annual retirement allowance based on City service (Line 5 X Line 6 X Line 7)	\$ 40,256.61
9		
10	Union Years of Service	2.9
11	Retirement Allowance Factor	0.03
12	Union Salary	\$ 79,271.92
13	Annual retirement allowance based on Union service (Line 10 X Line 11 X Line 12)	\$ 6,896.66
14	Total Blended retirement allowance (line 8 + line 13)	\$ 47,153.27
	Difference between Combined Methodology and Blended (Line 4 - Line 14)	\$ 15,392.28

The annual retirement allowance using the combined methodology is \$15,392.28 higher than the retirement allowance using the blended methodology.

Presidential Leave

Ron Saathoff

Birth date

02/21/1948

Member date

01/28/1977

Union President CERS date

01/01/2002

Last City salary

\$ 80,699.84 pay period

Current Union Salary

\$ 34,083.50 per month

Assumptions - Retire

01/01/2002

Service at Retirement

24.99 years

Age at Retirement

53 +years

Combined Methodology:

1 Years of service	24.99
2 City paid salary	\$ 80,699.84
3 Union	\$ 34,083.50
4 Total salary	\$114,783.34
5 Factor	0.03
6 Total years of service	24.99
7 Annual retirement allowance, combined method	\$ 86,053.07
8 Allowance does not exceed CAP of 90% of combined salary	\$103,305.01

Blended Methodology:

9 City salary	\$ 80,699.84
10 Retirement Allowance factor	0.03
11 City Years of Service	24.99
12 Annual retirement allowance based on City service (line 9 * line 10 * line 11)	\$ 60,500.67
13	
14 Union salary	not applicable
15 Retirement allowance factor	
16 Union years of service	0
17 Annual retirement allowance based on Union service	not applicable
18	
19 Annual retirement allowance, blended method from line 12	\$ 60,500.67
20	
21 Difference (line 7 - line 19)	\$ 25,552.40

The annual retirement allowance is \$25,552.40 higher using the combined methodology.

PRESIDENTIAL LEAVE
 RETIREMENT BENEFIT CALCULATIONS
 JUDIE ITALIANO
 26-Nov-01

Presidential Leave

Judie Italiano	
Birth date	04/07/1946
Member date	04/18/1977
MEA President	06/15/1986
MEA President Member Date	09/01/1997
Current MEA salary	\$ 3,780.40 pay period
City Position prior to Union President - Clerical Assistant II	
Last City Salary	\$ 429.20 pay period
Assumptions - Out of office and retire	01/01/2002
Service at Retirement	24.77 years
Age at retirement	55 + years
Service as MEA President as Member	4.428 per pay period

COMBINED METHODOLOGY

<u>Line No</u>	<u>Description</u>	<u>Amount</u>
1	Total Years of Service	24.77
2	Retirement Allowance Factor	0.0225
3	MEA Salary	\$ 98,290.40
4	Annual Combined Retirement Allowance (Line 1 X Line 2 X Line 3)	\$ 54,779.70

BLENDED METHODOLOGY

5	Union annual salary	\$ 98,290.40
6	Years of Service as President	4.428
7	Retirement Allowance Factor	0.0225
8	Annual retirement allowance based on years as union president (Line 5 X Line 6 X Line 7)	\$ 9,792.67
9	City Salary	\$ 11,159.20
10	City years of service	20.342
11	Retirement Allowance Factor	0.0225
12	Annual retirement allowance based on years as City employee (line 9 X line 10 X Line 11)	\$ 5,107.51
13		
14	Annual Blended Retirement allowance (line 8 + line 12)	\$ 14,900.18
	Difference between combined methodology and blended (line 4 - line 14)	\$ 39,879.51

The annual retirement allowance is \$39,879.51 higher using the combined retirement allowance method.

PRESIDENTIAL LEAVE
 RETIREMENT BENEFIT CALCULATIONS
 BILL FARRAR
 26-Nov-01

Presidential Leave
 Bill Farrar
 Birth date 12/31/1946
 Member date 02/18/1972
 POA President 02/05/2000
 Current biweekly POA salary \$ 3,048.92
 Assumption - Retire 1/1/2002 01/01/2002
 Service at Retirement 26.3 years
 Age at retirement 55 + years
 City Position prior to Union President - Police Officer II (5% Post Certificate Premium Pay)
 Salary at time of LWOP for POA President \$ 2,205.60 per pay period
 Service as POA President 1.964 years
 Annual City Salary \$ 57,345.60
 Annual POA Salary \$ 79,271.92

Computed Years of service at retirement:
 Retirement date 01/01/2002
 Member date 02/18/1972
 Total years of service 29.89
 POA president 02/05/2000
 Years of service as POA president 1.91
 Years of service as City employee 27.98
 Total years of service 29.89

Combined Methodology:

<u>Line No</u>	<u>Description</u>	<u>Amount</u>
1	Total years of service (City and POA)	29.89
2	Retirement Allowance Factor	0.03
3	POA Salary (use higher of POA or City salary)	\$ 79,271.92
4	Annual retirement allowance based on POA salary (Line 1 X Line 2 X Line 3)	\$ 71,083.13

Blended Methodology

5	City Years of Service	27.98
6	Retirement Allowance Factor	0.03
7	City Salary	\$ 57,345.60
8	Annual retirement allowance based on City service (Line 5 X Line 6 X Line 7)	\$ 48,135.90
9		
10	Union Years of Service	1.91
11	Retirement Allowance Factor	0.03
12	Union Salary	\$ 79,271.92
13	Annual retirement allowance based on Union service (Line 10 X Line 11 X Line 12)	\$ 4,542.28
14	Total Blended retirement allowance (line 8 + line 13)	\$ 52,678.18
	Difference between Combined Methodology and Blended (Line 4 - Line 14)	\$ 18,404.95

The annual retirement allowance using the combined methodology is \$18,404.95 higher than the retirement allowance using the blended methodology.

PRESIDENTIAL LEAVE
 RETIREMENT BENEFIT CALCULATIONS
 RON SAATHOFF
 26-Nov-01

Presidential Leave

Ron Saathoff	
Birth date	02/21/1948
Member date	01/28/1977
Union President CERS date	01/01/2002
City Position - Fire Captain (EMT pay and 5% Admin Assignment Pay)	
Last City salary	\$ 80,699.84 pay period
Current Union Salary	\$ 34,083.50 per month
Assumptions - Retire	01/01/2002
Service at Retirement	24.99 years
Age at Retirement	53 +years

Combined Methodology:

1 Years of service	24.99
2 City paid salary	\$ 80,699.84
3 Union	\$ 34,083.50
4 Total salary	<u>\$114,783.34</u>
5 Factor	0.03
6 Total years of service	<u>24.99</u>
7 Annual retirement allowance, combined method	\$ 86,053.07
8 Allowance does not exceed CAP of 90% of combined salary	\$103,305.01

Blended Methodology:

9 City salary	\$ 80,699.84
10 Retirement Allowance factor	0.03
11 City Years of Service	<u>24.99</u>
12 Annual retirement allowance based on City service (line 9 * line 10 * line 11)	\$ 60,500.67
13	
14 Union salary	not applicable
15 Retirement allowance factor	
16 Union years of service	0
17 Annual retirement allowance based on Union service	not applicable
18	
19 Annual retirement allowance, blended method from line 12	\$ 60,500.67
20	
21 Difference (line 7 - line 19)	\$ 25,552.40

The annual retirement allowance is \$25,552.40 higher using the combined methodology.